POPULAR GOVERNMENT

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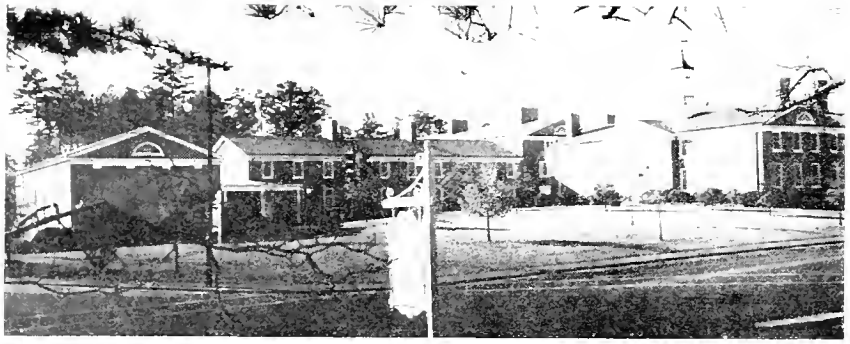
The County and the District Court

Part Two: Legislative Representation in North Carolina

Smith and the Sudden Service Drive-In

The Training School and the Child

The District Court Prosecutor



North Carolina's training schools are featured on this month's cover. Top left is the chapel at Samarcand Manor, Eagle Springs. Lower left, a vocational textile training program in operation. Center, recreational activity. Right is the administration building at Jackson Training School, Concord. See page 17 for the full story.

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The County and the District Court

By C. E. Hinsdale

December 5, 1966, will be an important day in the judicial history of North Carolina. On that day in 22 counties of the State the first sessions of the new district court will be held. As provided in the Judicial Department Act of 1965, (Ch. 310, S.L. 1965) the district court will replace in these counties all existing courts below the superior court level. While a lead time of over 20 months was written into the new law to provide ample opportunity to prepare for the new court system, the changeover will not take effect without some major adjustments. Persons in county government in particular will have many adjustments to make. This article will attempt to advise county officials of pertinent provisions of the new law, in an effort to make the changeover as smooth as possible.

Fiscal Considerations

Article IV, Section 21 of the Constitution, as amended in 1962, provides for the abolition in each county of all courts below the level of the superior court when the district court is activated in the county, and in no event later than 1 January 1971. Section 18 of the same Article provides, in part, that "The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers shall be paid from State funds." Taken together, these two provisions relieve the counties of all substantial judicial functions, and transfer the responsibility for judicial operations to the State. Since in monetary terms this responsibility runs to six figures in some counties, the impact of the change is considerable. The impact is intensified by the implementing legislation, the Judicial Department Act of 1965, which deprives the counties in large measure of court-produced revenues (costs of court), diverting this "income" to the State treasury.

In a typical county under present law the board of commissioners appoints, or the voters elect, for the county court, a judge, a solicitor, and a clerk. For the superior court in each county the voters elect a clerk. The commissioners fix the number of the clerk's assistants and their salaries. The county furnishes and maintains the courtroom and the clerk's office and provides the clerk's supplies and equipment. The salaries of all persons connected with the court, from judge to clerk to reporter, are paid by the county. Fees and mileage of jurors are also a county responsibility. In the average county these outlays may amount to a sizeable percentage of the total county budget. To compensate for these expenses, the county sets (or through its representative requests the legislature to set) a bill of costs for various services rendered by the court. In most counties, the income derived from this bill of costs in the superior court is inadequate to defray the court's expenses. In the county court, on the other hand, where most commonly there is no jury, the costs of court frequently more than offset the expenses. The net result in some counties is a "profit" on overall court operations. This profit is used to support other functions of county government.

Under the district court system, the voters of the county will continue to elect the clerk of superior court, and the county will continue to furnish and maintain a courtroom and related physical facilities, but all else will be changed. In particular, court personnel become State employees; the excess of costs of court, if any, over expenses for operating the court, will no longer be available to the county commissioners; and the minor percentage of the costs of court actually retainable by the county will be earmarked for the support of judicial facilities only. In 22 counties adjustments in anticipation of these changes must be made in the fiscal year 1966 budget. The changes are not all on the debit side of the budget, but no one can predict with assurance of any accuracy whether the credits will balance the debits.

Section 7A-300 provides that in counties having a new district court the following expenses become a State responsibility:

- Salaries and expenses of assistant solicitors [superior court], district judges, prosecutors, assistant prosecutors, magistrates, family court counselors, clerks of court, their assistants and deputies, and other clerical employees;
- Expenses of the clerk's office, including supplies and materials, postage, telephone and telegraph, bonds and insurance, equipment, and other necessary items;
- Fees and travel expenses of jurors, and of witnesses required to be paid by the State; and
- Compensation and allowances of reporters.

Section 7A-302 provides that responsibility for the following expenses remains with the county: ". . . courtrooms and related judicial facilities (including furniture) . . ." Reference to section 7A-304 is necessary to determine what are "courtroom and related judicial facilities":

> ". . . adequate space and furniture for judges, solicitors, prosecutors, magistrates, juries, and other court-related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one."

The meaning of "operating expense," to be met by the State under the mandate of the Constitution, and "non-operating expense," to be met by the county, is reasonably clear. Physical facilities, that is, realty, together with its permanent, non-consumable furnishings is deemed to be non-operating, and hence a county responsibility; all else is an operating expense, and chargeable to the State. In practice a few questions may arise. For example, are file cabinets whose tops are used as counters furniture (county) or equipment (State)?

Supplies and equipment in the clerk's office at the time the district

court is activated become the property of the State. (Sec. 7A-303). While technically the county commissioners in the name of economy are thus given an opportunity between now and the time the district court is activated in their county to remove specific items of the clerk's office equipment, or to fail to repair or replace such equipment, such conduct is considered unlikely, since its main result would be to inconvenience the people of the county. And in view of the statutory duty imposed on the county commissioners under G. S. 2-8 to furnish the "requisite stationery, records, furniture and filing cases and devices" for the clerk's use, such actions would also be unfair, if not illegal.

Costs of Court

A vital feature of the new court system is a uniform statewide costs-of-court bill. Under this bill the major percentage of costs collected will go to the State to support its obligation to pay the operating expenses of the system. The counties, however, will be allowed to retain a *facilities fee* as compensation for furnishing the physical facilities in which the courts will operate.

The facilities fee varies with the subject matter and the court level, as follows:

Subject Matter	*District Court*	*Superior Court*
Civil Action	$5 (Before a Magistrate $2)	$5
Criminal Action	$2	$15
Special Proceeding	—	$2
Estate Administration	—	$2

On appeal from the clerk of superior court, or from the district court to the superior court, the fee is chargeable a second time, except in civil appeals from the clerk to the judge. Assuming the availability in each county of current data as to the numbers of cases in each of the above categories, it will nevertheless be impossible to arrive at a reasonably accurate estimate of how much revenue the facilities fee will produce because of one or more of the following uncertainties: the number of criminal cases in which the fee will not be collected; the number of civil cases involving prayers for money judgments of $300 or less which are within the magistrate's "jurisdiction" and the extent to which the magistrate will in fact be used in small claims cases; the number of misdemeanors formerly tried in superior court which now must originate in the district court; and the volume of appeals from the magistrate, the clerk of superior court, and the district court judge.

As noted earlier, the uses to which accumulated facilities fees may be put are restricted. Sec. 7A-304 specified that they must be used for "providing, maintaining, and constructing" courtroom and related judicial facilities. This section goes on to say, however, "In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county . . . may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to supplement the operations of the General Court of Justice in the county." It is a matter of some speculation to what extent this "safety valve" will be useful. Counties with recently completed — and adequate — courthouses and related judicial facilities may be eager to devote funds cumulated by means of the facilities fee to the retirement of bonded indebtedness on the facilities. On the other hand, while recently constructed and adequate facilities may need little maintenance or additions for years to come, eventually the need will arise for major expenditures for renovation or expansion, and such expenditures can best be met only if an adequate sinking fund has been gradually accumulated.

Counties blessed with modern, adequate facilities and no indebtedness resulting from their construction— if there be any counties so fortunate— may, with State permission, "supplement the operations of the General Court of Justice" in their counties by (for example) supplementing the salary of the clerk of superior court (Sec. 7A-101), or giving the clerk additional clerical personnel, or hiring additional counselors for district court judges sitting in domestic relations cases. These possibilities are perhaps more speculative than real.

The facilities fee is the county's sole source of income from the courts for the support of its *judicial* facilities. The 1965 Act, however, sanctions the collection of several other fees in support of court-related (law enforcement) activities. None of these fees is new, although the amount of the fee may be:

● *Arrest Fee* For each arrest made by a county or State law enforcement officer, resulting in a conviction, a $2 arrest fee is assessable in favor of the county. (Sec. 7A-304). This fee is also collectible for personal service of criminal process, including citations. The revenue this fee will produce can be estimated with reasonable accuracy in all counties. If the arrest is made by a city policeman, the city receives the arrest fee. No arrest fee accrues to the benefit of any individual.

● *Sheriff's Fees* Sec. 7A-311 standardizes, throughout the State, the fees chargeable by the sheriff in a civil action or special proceeding, for service of civil process ($2), seizure and care of personal property (all necessary expenses), sales of property (5% on the first $500, 2½% on higher sums, plus necessary expenses), ejectment (all necessary expenses), etc. These fees become the property of the county; no fees accrue to any individual. This civil process fee schedule was adopted by the legislature as recommended by a committee of sheriffs whose primary aim was to arrive at a fair fee bill substantially representative of fees currently charged in the various counties. In some counties it may bring in more revenue than the former fee bill did; in others, less. Increased income, if any, may be offset by the need in some counties to place deputies, formerly fee-compensated, on a county salary.

● *Jail Fee* Defendants lawfully confined in the county jail, and who are finally convicted, are liable to the county at the rate of $2 per day for each day's confinement, or fraction thereof. While the sums collectible hereunder will not operate this facility in the black, places of confinement cannot reasonably be expected to be self-supporting, much less show a profit.

● *Fines and Forfeitures; The County School Fund* What has been said so far applies only to costs of court. *Fines and forfeitures,* under Article IX, section 5 of the Constitution, continue to accrue to the benefit of

the county school fund. The total amount of fines and forfeitures collected, however, may decrease substantially in those counties in which the prevailing method of settling minor traffic offenses is by forfeiture of cash collateral (appearance bond) rather than by written waivers of trial, pleas of guilty and depositing of a pre-set fine and costs of court. Under the 1965 Act, the forfeiture-of-collateral method will be replaced in all counties by the waiver method. The effect of this can be best shown by an example. Assume an offender is charged with speeding five miles an hour over the limit. Assume further that collateral for this offense has been set by the local judge at $20 (equivalent, as it usually is, to the anticipated fine ($5) and costs ($15) if the offender appeared in court and was convicted). Under the present system the $20 forfeited collateral goes to the school fund; under the new system, only the $5 fine would go to the school fund. (The county would receive $2 facilities fee and $2 arrest fee and the State would get $11.) Multiplied by hundreds or thousands of cases, this could have a noticeable impact on the school fund.

Non-Financial Relationships

While the coming of the district court system has its most important impact on county finances, its effect in other areas of county government is by no means negligible. Perhaps the most important of these non-financial concerns is the relationship of the clerk of superior court to the county and the county commissioners. In the constitutional and political sense, the clerk, since he is still elected by the qualified voters of his county, remains a county officer; in the practical, administrative sense the clerk's ties to the county are all but severed, and he becomes primarily a State official. First, the clerk's compensation is fixed and paid by the State (Sec. 7A-101); secondly, the number of his assistants, deputies and other employees, and their compensation, is also fixed by the State (Sec. 7A-102); and finally, his office supplies, equipment and methods of doing business all become exclusively a State responsibility.

In an effort to preserve some semblance of the traditional salary relationships of county officials, particularly "courthouse" officials, Sec. 7A-102 of the 1965 law provides that the Administrative Officer of the Courts, prior to setting the numbers and salaries of clerical employees in each county, shall consult with the clerk of superior court and with the board of county commissioners or its designated representative in each county, and fix the salaries of clerical employees "with due regard to the salary levels and the economic situation in the county." This procedure was fostered by a tacit recognition that State salaries tend generally to be higher than county salaries, and that imposition of a single, statewide salary schedule on the poorer counties might create wide disparity in "courthouse" salary schedules, resulting in morale problems and further pressure on county commissioners to raise county salaries generally. To the extent that this procedure tends to lessen what disparities there are between State and local salary schedules, it may in the long run in fact improve morale and minimize a recurrent personnel problem.

The independence of local judicial operations from county controls is further illustrated by a number of other provisions of the new district court law. Henceforth the superior court clerk's books and records are to be audited by the State Auditor rather than by the county. (Sec. 7A-103). The clerk's sole responsibility to the county is to remit, once monthly, the fees due the county under the uniform costs bill. (Sec. 7A-103). The clerk's bond, and that of his employees, is fixed by, and made payable to, the State, which pays the premiums. (Sec. 7A-104). There is but *one* clerk of court, who is responsible for all trial court clerical functions in the county. (sec. 7A-180). Clerks of former county courts, particularly domestic relations or juvenile courts, some of them appointed by county commissioners, will become assistants to the clerk of superior court, but only upon appointment by the latter. (Sec. 7A-102). The prosecutor for the district court will be appointed by the senior regular resident superior court judge, for the district. (Sec. 7A-160). In some counties there may be assistant prosecutors, full or part-time; they will be appointed by the prosecutor, on authority of the State (Sec. 7A-164, 165). Assistant solicitors are treated similarly. (Sec. 7A-43.2). Magistrates, officers of the district court and in a sense replacements for the justice of the peace, will be allowed each county in a number determined solely by the State. (Sec. 7A-132-133). The clerk will make nominations for each authorized magistracy, and the resident superior court judge will make the appointment. (Sec. 7A-171). Even the schedule of sessions of district court will be free of county control; they will be set by the chief district judge. (Sec. 7A-146). When a jury session is called for, the chief judge will notify the appropriate county authorities in time for a jury panel to be summoned in the same manner as in the superior court.

Finally, the availability of special counseloring services for judges sitting in domestic relations cases is made a State responsibility (Sec. 7A-134). The Administrative Officer of the Courts may authorize such counselors only in counties in districts which have a county with over 100,000 population. The county of course is not barred from supplementing the operations of the State in this field, either through the district court system or the county welfare department.

Adequacy of Physical Facilities

The 1965 Act, in reference to "adequate courtroom and related judicial facilities" does not define the term "adequate." Adequacy is of importance to a county, however, when it desires to use accumulated facilities fees to retire outstanding indebtedness incurred in construction of the facilities. Then the Administrative Officer of the Courts is unlikely to approve such a use unless existing courtrooms and related judicial facilities are fully adequate.

Aside from related judicial facilities such as jails and juvenile detention homes, it can safely be said that in some counties courtrooms have been neglected, and will undoubtedly prove inadequate for the demands of the district court system, as they are currently inadequate for the superior court. The pending activation of the new court presents an ideal opportunity for the county commissioners in all counties to examine critically their courtroom facilities, and to make plans *now* for the necessary improvements. Whether this means new construction or merely remodeling, it is

(Continued on page 21)

PART TWO

Legislative Representation in North Carolina: A Chapter Ends

By John L. Sanders

[*Editor's note: The first article in this series (published in the February issue of* Popular Government*) reviewed the existing system of representation in the North Carolina General Assembly; the case of* Drum v. Seawell, *in which the United States District Court held the apportionment of the Senate and House of Representatives and the congressional districts in North Carolina to be invalid, due to their failure to give adequate consideration to population; and the work done by three select legislative committees in preparation for the extra session of the General Assembly which was called by the Governor to adopt new legislative and congressional district plans. This article deals with the extra session and offers a few observations on the work of that session and its possible consequences.*]

The Extra Session

Strategy

By the time the select legislative committees had completed their work early in January, it was apparent that the House and Senate plans would command comfortable (if unhappy) majorities in the houses primarily affected by those plans. It was assumed by legislative strategists that each house would take initial action on the plan for its own reapportionment and that the other house would follow that lead. The prospects of congressional districting were more speculative. Partly for this reason, it was determined that House and Senate reapportionment should be completed before congressional redistricting was tackled. Legislative leaders predicted a one-week session, moved perhaps as much by hope as by expectation.

The Chairman of the Republican Party of the State had criticized the work of the select committees and earlier had promised to offer one or more alternative reapportionment plans.[24] The scheduled January 6 release of his Party's congressional redistricting plan was cancelled at the last moment. News reports credited this action to opposition by Republican Congressman Charles R. Jonas, who allegedly objected to the feature of the Republican plan which would have pitted him against Democratic Representative Basil Whitener.[25]

The Session Begins

The extra session convened at noon on Monday, January 10. It was the third legislative session in a twelve-month period, and one had to go back to 1866-67 to find precedent for it. Both houses adopted the rules of the 1965 regular session, with modifications limiting the business of the session to bills pertaining to reapportionment and redistricting and providing that all bills should be referred to the Committee of the Whole Senate or House. The bills to carry out the recommendations of the select committees were promptly introduced.

The Governor addressed a joint session of the legislature, strongly urging the members to fulfill their redistricting obligations and commending the work done in preparation for the session, but endorsing no specific reapportionment plans. While the Governor was the chief shaper of the strategy of the State in response to the court action, the inherently legislative nature of the reapportionment process dictated a somewhat more detached position than that usually taken by Governors on matters of comparable import.

The joint session then dissolved. Later in the afternoon, the two houses met in Joint Committee on the Whole to hear explanations of the principal bills and statements from non-legislative witnesses on all aspects of reapportionment. Few witnesses sought to be heard.

Summary of Proceedings

For the remainder of the week, the Senate and House met separately. Regular committees were not used. In order to facilitate the legislative process and to enable all members to participate fully in the discussion of all bills, most of the work was done in committee of the whole. All bills were referred to committee of the whole, debated and sometimes amended there, and either postponed indefinitely (thus effectively killing them) or reported to the floor. No attempt will be made here to follow each step of the legislative proceedings, for the two houses frequently moved into and out of committee of the whole and from bill to bill and back again as tactical considerations suggested. A brief day-by-day summary might provide a useful background for the more detailed discussion of the main bills which follows.

On Wednesday, action was completed on S.B. 3, the bill to reapportion the Senate. Thursday saw final action on H.B. 1, the bill to reapportion the House, after a day's delay to resolve Senate and House differences over the plan. Congressional redistricting (S.B. 4) was the primary focus of interest on Wednesday and Thursday, when action was virtually completed on that subject. On Thursday, the bill authorizing boards of county commissioners to reapportion themselves (H.B. 8) was finally enacted, seat numbering bills for both the House (H.B. 2) and Senate (S.B. 5) were defeated after two days of intermittent debate, and two congressional redistricting bills (H.B. 10 and H.B. 11) were rejected in the House. Friday was devoted to final action on congressional redistricting (S.B. 4), disposing of several constitutional amendment proposals (H.B. 5, H.B. 6, H.B. 7, H.B. 14,

24. "Republicans Map Plans for Political Progress," Greensboro Daily News, Oct. 10, 1965.
25. "Jonas Stops Party's Redistricting Plan," The News and Observer, Jan. 7, 1966, "G.O.P. Districting Plan Vetoed," Winston-Salem Journal, Jan. 7, 1966.

and S.B. 9), the defeat of a local bill version of House seat numbering (H.B. 15), and final ratifications, followed by adjournment.

Introductions for the session totalled only 12 bills and resolutions in the Senate and 16 in the House, including four duplicate bills. The Committee-sponsored bills were the only ones introduced to reapportion the House and Senate in compliance with the court order. Three congressional redistricting proposals (including one abolishing districts) were offered in addition to that of the Joint Committee. County board reapportionment, constitutional amendment proposals, and miscellaneous measures made up the rest of the introductions.

The floor leaders for the Senate and House reapportionment bills were Senator Thomas J. White of Lenoir County and Representative Earl W. Vaughn of Rockingham County; for the congressional redistricting bills, Senator Fred S. Royster of Vance County and Representative Joseph E. Eagles of Edgecombe County.

Senate Reapportionment

S.B. 3, effectuating the Select Committee's plan for senatorial districts and the apportionment of Senate seats among them, faced only one serious challenge in its course. On Tuesday morning, the Senators from Guilford County joined those from the proposed Fourth District (Edgecombe, Halifax, Pitt, and Warren Counties) in sponsoring a committee substitute designed to give Guilford three Senators of its own and to realign several other districts to satisfy objections to the proposed Fourth District. This move was easily defeated in the Senate Committee of the Whole. The bill passed its second and third readings on Tuesday afternoon and went to the House.

The Committee of the Whole House reported S.B. 3 favorably, without amendment. On its second reading, the House defeated three amendments to S.B. 3 offered by Representative George T. Clark of New Hanover (1) to abolish senatorial rotation agreements statewide, (2) to abolish the existing rotation agreement within the Tenth District (Duplin, New Hanover, Pender, and Sampson Counties), and (3) to divide the Tenth into two districts electing one Senator each. Four amendments were submitted by Representative Carl L. Bailey of Washington County for the purpose of keeping his county in a senatorial district with other southern Albemarle counties; all failed.

S.B. 3 passed its second reading in the House by a vote of 97 to 14 on Tuesday and its third reading on Wednesday morning. It was ratified on Thursday as Chapter 1 of the acts of the extra session. S.B. 3 was the only major bill of the session which underwent no amendment. Figure 1 shows the plan as enacted.

House Reapportionment

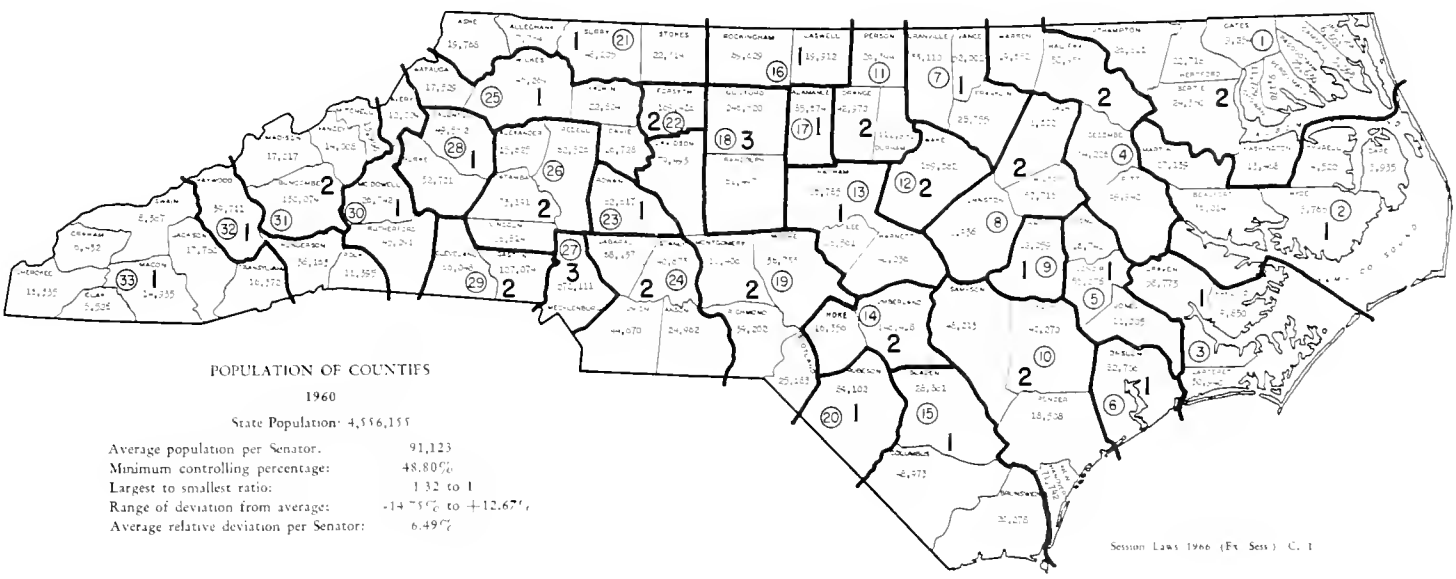
H.B. 1, the bill to establish representative districts and apportion House seats among them and to revise the election laws to accommodate multi-county representative districts, was the chief order of business in the Committee of the Whole House of Representatives on Tuesday morning, January 11.

The Select Committee of the House had linked Democratic Montgomery County (population 18,408) in a two-member representative district with normally Republican Randolph County (population 61,497). The anticipated result was that Republican voters in Randolph would elect both members, thus eliminating one consistently Democratic seat and, more significantly, retiring popular, eight-term Representative J. Paul Wallace of Montgomery. This was done over the protest of Representative Wallace and contrary to the desires of the Committee, which found that the facts of geography left it no practical alternative. On this small rock the whole plan almost came to grief.

The Committee of the Whole House gave H.B. 1 a favorable report without amendment. When the bill came up on its second reading in the House, Representative

Figure 1

SENATORIAL DISTRICTS, 1966-



Wallace first offered an amendment to combine Guilford, Randolph, and Montgomery in a single eight-seat district; that failed on a 37 to 65 vote. Then he asked that Davidson and Randolph be put in one four-seat district; that Hoke, Montgomery, and Moore become a two-seat disrrict; and that Robeson and Scotland become a three-seat district. The Representative from Hoke objected, and the amendment was defeated.

An amendment offered by Representative B. W. Thomason of Transylvania to move his county from the new 48th to the 45th district with Buncombe and McDowell failed.

The unamended bill was then passed on second reading. That vote was promptly reconsidered and several amendments were offered. The first, by Representative Iona Collier of Jones County, shifted that county from the new Third District (Carteret, Craven, Jones, and Pamlico) to the new Ninth District (Green and Lenoir). Representatives from the other affected counties approved the change. It was adopted without difficulty in response to a plea that the people of Jones wanted to be in the same senatorial and representative districts.

An amendment offered by Representative Holshouser, the Republican floor leader, proposed a redivision of the Buncombe-McDowell and Haywood-Madison-Yancey districts into three districts. It met prompt defeat.

Several noncontroversial amendments to the election law portion of H.B. 1 were adopted, and the bill passed its second reading by a roll-call vote of 107-10—a vote made remarkable by the fact that fully two-thirds of the majority thereby agreed to the termination of the independent representation of their counties in the House, and many accepted the prospect that rarely would residents of their counties serve again in the House. That result was inevitable; their votes were not.

Representative Wallace objected to the suspension of the rules to enable third-reading passage that day, a motion to suspend the rules failed, and the bill went over to Wednesday.

When debate on H.B. 1 was resumed on Wednesday morning, Representative Wallace offered a third amendment, reshaping four proposed districts (Districts 24, 27, 28, and 31 as shown in Figure 2) into three: Robeson-Scotland with three seats, Hoke-Montgomery-Moore with two seats, and Davidson-Randolph with four seats. Representatives of several of the affected counties opposed the change, which drew support from friends of its sponsor from other parts of the State. This was the one instance in the entire House and Senate reapportionment process where the result was determined by friendship for a legislator, strengthened by minor partisan considerations. The amendment carried, 56 to 46.

H.B. 1 then passed its third reading by a vote of 104-10, and went to the Senate.

It had been assumed that, under the tacit agreement that each house would determine its own reapportionment and the other would concur, the Senate would approve H.B. 1 in whatever form the House passed it. The Senate —particularly the Senators from the counties affected by the Wallace amendment—felt no such constraint. When H.B. 1 reached second reading in the Senate on Wednesday afternoon, an amendment was promptly offered and adopted, cancelling the effect of the Wallace amendment and restoring the district lines to their original form. (The Jones County amendment was allowed to stand.) The bill passed its second and third readings in the Senate, and went back to the House for concurrence in the Senate amendment.

The House was not in a complaisant mood. Despite a plea from Speaker Taylor that the House not risk deadlock by refusing to accept the Senate amendment, the House majority felt its prerogatives slighted by the Senate's action and refused to concur.

Both houses agreed to send the bill to conference. The five-member Conference Committee met Wednesday afternoon and Thursday morning. It examined (as had the Select Committee) all possible district arrangements which might have helped Montgomery. All carried objections even more distasteful than the Montgomery-Randolph combination.

The Conference Committee reported early Thursday afternoon. Faced with the danger of a deadlock based more on offended pride than on the substance of the matter in contest, the House accepted by a vote of 75-34 the recommendation of the Conference Committee that it accede to the Senate amendment nullifying the Wallace amendment. As at other critical points, the judicial presence was telling: members knew that while they could frustrate legislative action on House reapportionment, the result would merely be to transfer that function to the District Court. The Senate readily accepted the Conference Committee's report (which also had recommended a minor technical amendment to the bill), and H.B. 1's course was done. (The bill was ratified on January 14 as Chapter 5.) Figure 2 depicts the plan as adopted.

Only one other bill of the session dealt directly with House reapportionment. H.B. 12, introduced by Representative A. A. Zollicoffer, Jr., of Vance County provides that if the United States Constitution should be amended to permit one house of a bicameral state legislature to be apportioned on a non-population basis, then the present apportionment of the House of Representatives would be reinstated for subsequent elections. Should a popular referendum on the subject be required by the federal constitutional amendment, the Governor must call an election on whether to revert to the present apportionment. The unliklihood of the adoption of the necessary constitutional amendment doubtless eased the enactment of H.B. 12 (ratified as Chapter 6).

An effort to retain some of the benefits of the local act system for the smaller counties, H.B. 9 would have provided for the popular election of a county legislative advisor in each county. The advisor would have been, in effect, the agent of the county to deal with the Representative of the district on matters of local legislation. His function would have been performed in ten days and at a salary of $500. The bill drew little support and was postponed indefinitely in the Committee of the Whole House on motion of its introducer, Representative Charles R. Crawford of Swain.

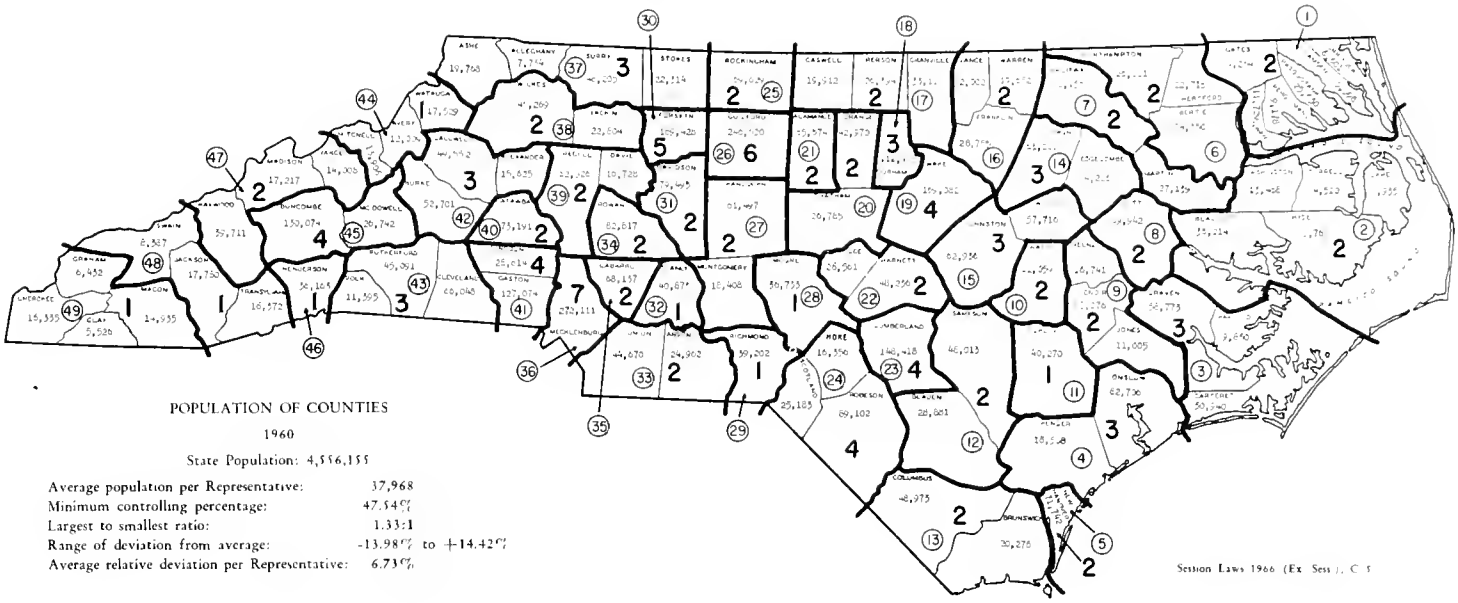
Senate and House Plans Analyzed

The redistricting and reapportionment plans enacted for the Senate and House of Representatives differ from the plans recommended by the select committees in only one particular: Jones County was transferred from Representative District 3 to District 9, with very minor statistical consequences.

No special effort was made by the select committees to create senatorial and representative districts with iden-

Figure 2

REPRESENTATIVE DISTRICTS, 1966-



tical boundaries. The fact that the number of Representatives is not an even multiple of the number of Senators would have made it very difficult to do so in many cases without making the districts unreasonably large. The plans do, however, result in ten senatorial districts which are coterminous with representative districts (one senatorial district, the 33rd, contains two whole representative districts). It happens that in every one of those coterminous districts, overpopulation in one house is balanced by underpopulation in the other, often very evenly so. On a county-by-county basis, such a balancing effect is found in 51 instances.

Table 1 compares the statistics of the new plans with those of the plans they will supersede. The changes in the House apportionment are, as one might expect, the more striking.

While comparison of these plans with reapportionment plans recently adopted by legislatures or courts in other states is risky and inconclusive, due to the fact that plans are evaluated by different courts and with a view to the special circumstances of each state, it appears from the available statistics that both of the North Carolina plans compare quite favorably with most of those plans adopted during the last year.

Table 1

PRESENT AND NEW APPORTIONMENT PLANS COMPARED

	Present Plans		*New Plans*	
	Senate	*House*	*Senate*	*House*
Seats	50	120	50	120
Districts	36	100	33	49
Average population per member	91,123	37,968	91,123	37,968
Largest population per member	148,418	82,059	102,672	43,444
Smallest population per member	65,722	4,520	77,678	32,660
Population variance ratio	2.26:1	18.15:1	1.32:1	1.33:1
Range of deviation from average	—27.88% to +62.88%	—88.10% to +116.61%	—14.75% to +12.76%	—13.98% to +14.42%
Average deviation per member	9.9%		6.49%	6.73%
Minimum controlling percentage	47.06%	27.09%	48.80%	47.54%

The net effect of the recasting of House seats will be a loss of three seats by the East and eight by the West, with a resulting gain of 11 seats among the Piedmont counties. The small net loss by the East obscures the fact that there were extensive shifts within the region. For example, the six counties east of the Chowan River now have six Representatives; after 1966, they will have only two. Seven of the ten seats lost by these and other thinly populated counties of the East will go to other more populous Eastern districts, such as Wayne, Wake, Cumberland, Pitt, and New Hanover. The shifts of seats within the Piedmont and within the West will be slight.

The revision of the senatorial districts will produce some shifts of representation within the East and within the Piedmont, but no intersectional transfer of seats.

Congressional Redistricting

It was apparent from late December that of the three plans being developed by the select committees, the one for the congressional redistricting would be the object of the most heated and numerous opposition. Bladen spokesmen were unhappy about losing their traditional tie with the Seventh District. Warren people did not like their severance from the Second and attachment to the First. Residents of the Fifth District complained of the linking of Durham and Forsyth Counties in the same district. The folks in Surry wanted to be in the Fifth, not the Ninth. Piedmont members of the Joint Select Committee had charged that their area was being ill-treated by Eastern and Western members. Rutherford citizens were distressed at their transfer from the Tenth to the 11th District.

Defenders of the Committee's work had one great advantage, however: they had a plan, one which many—probably a majority—of the legislators could live with; its opponents did not. Critics of the Committee's plan found that their objections, however valid each of them might be, did not add up to a complete plan. Thus the session opened with no affirmative rallying point for these who wished to see the work of the Committee rejected.

There was some passing sentiment for legislative default on congressional redistricting. "The courts couldn't do a worse job than the special legislative committee. We'd be happy to take a court plan," commented one legislator.[26]

S.B. 4 was the Select Committee's bill to establish the new congressional districts; H.B. 4 was its duplicate. The latter bill underwent brief debate in the Committee of the Whole House on Tuesday, while its counterpart received more extended discussion in the Committee of the Whole Senate.

On Tuesday afternoon, Senator Moore offered for himself and several other Senators a committee substitute for S.B. 4 which radically revised the Select Committee's plan in an effort to meet many of the objections to the latter proposal which had been raised by legislators. The committee substitute would not have put any two sitting Congressmen in the same district. Statistically, it was little different from the Committee's plan, but several of the districts were less compact in form than those in that plan. The proposal was debated at length. Defenders of the S.B. 4 plan delayed the showdown on the adoption of the Moore committee substitute until Wednesday morning, because they were unsure at the end of Tuesday's session that they had the votes to reject it. There was speculation that the Senate membership might be evenly divided on the issue.

Meanwhile, two more congressional redistricting bills had been offered in the House on Tuesday: H.B. 10[27] by Representative James B. Vogler of Mecklenburg County and H.B. 11[28] (the Republican plan) by Representative James E. Holshouser, Jr., of Watauga County.

On Wednesday morning, the Committee of the Whole Senate resumed debate on the Moore committee substitute for S.B. 4. Senator Moore withdrew his first committee substitute and offered another, which was defeated by a vote of 18 to 32, a margin which probably widened once it became apparent that the effort was doomed.

An amendment offered by Senator L. B. Hollowell of Gaston County for the purpose of retaining Rutherford County in the Tenth District (and in the district line revisions required, putting Congressmen Jonas and Whitener in the same new district) was defeated by the Committee. So was a committee substitute sponsored by Senator J. W. Gentry of Stokes County with the primary objective of keeping Surry County in the Fifth District. A favorable report was then given the unamended S.B. 4 by the Committee of the Whole Senate.

On Wednesday afternoon, S.B. 4 underwent further senatorial criticism when it came up on its second reading. The plan gave too much consideration to incumbent Congressmen, opponents said, and too little to the problems being created for the Democratic Party by the strengthening of the Republican hold on the Ninth District. The bill passed its second reading by a three-to-two margin, however, and went on to its third reading.

At that point, an amendment was offered and adopted to move Bladen County from the new Third District to the new Seventh. The effect was to restore the Seventh to its present form and to widen substantially the population differentials between the largest and smallest districts—now the Seventh and the Third, respectively.

Despite the fact that the bill was already under consideration on its third reading, an objection to third reading was honored and the bill went over until Thursday.

On Thursday morning, the Senate quickly adopted S.B. 4 on third reading by a 32-18 vote and sent it to the House.[29]

On Thursday morning, the Committee of the Whole Senate refused to report favorably S.B. 10 (introduced the previous day by Senators Fred M. Mills, Jr., of Anson County, and Jack H. White of Cleveland County, both vocal critics of S.B. 4), which called for congressmen henceforth to be elected from the State at large.

The Committee of the Whole House on Thursday heard a reiteration of the criticisms of S.B. 4, particularly for its treatment of the Ninth District, and then approved an amendment moving Warren County from its proposed location in the new First District back to its

26. "Let the Court Draw Districts?" The News and Observer, Jan. 11, 1966.

27. H.B. 10 differed extensively from S.B. 4 in an effort to meet most of the objections to the latter plan. It left all incumbents unopposed, and its population standards did not differ materially from those of S.B. 4 as enacted.

28. H.B. 11 exhibited population standards equivalent to those of S.B. 4 as introduced, it made most of the districts more compact, and it posed a contest between Congressman L. H Fountain and the new Congressman from the present First District.

29. The Committee of the Whole House postponed indefinitely H.B. 4 and worked thenceforth on S.B. 4.

traditional place in the Second. A favorable report on S.B. 4 as amended followed.

When S.B. 4 came on for its second House reading that afternoon, the Warren County amendment was adopted. An amendment shifting Rutherford County from the 11th back to the Tenth was easily defeated, because it would have widened substantially the population differentials and doubtless opened the way for the other amendments. Second reading passage came on a 78-40 vote, and objection being made to further action, the bill went over until the next day.

Unfavorable committee reports were given H.B. 10 (the Vogler bill) by a 63-50 vote and H.B. 11 (the Holshouser bill) by a voice vote in the Committee of the Whole House on Thursday afternoon, thus disposing of all pending alternative congressional redistricting plans.

The rest was formality. Friday morning saw one final effort by Piedmont spokesmen to alter the redistricting plan. Representative Arthur Goodman, Jr., of Mecklenburg offered an amendment which would have rewritten the entire plan, greatly improving its population statistics but in the process matching three pairs of incumbent Congressmen in new districts. Its fate was swift. Third reading passage followed, the Senate concurred in the Warren County amendment without debate, and S.B. 4 was shortly ratified as Chapter 7. Figure 3 illustrates the plan as finally adopted.

As enacted, the congressional redistricting plan differs in only two particulars from that recommended by the Joint Select Committee: Bladen was transferred from the Third to the Seventh Districts and Warren from the First to the Second Districts, thus putting those two counties back into districts of which they have long been a part and from which the Committee had proposed to take them solely to balance district populations. As a result of the Bladen shift, the Third and the Seventh Districts, which share a long common border, became the smallest and largest districts in the State, deviating from 8.91 per cent below the statewide average to 8.39 per cent above it. The population variance ratio was increased to 1.19 to 1. The only effect of the Warren County amendment was to increase the average population deviation slightly, to 3.46 per cent.

By contrast, the Joint Select Committee's plan had shown population deviations ranging from 3.50 per cent below to 6.15 per cent above the average, and in widely separated districts; the population variance ratio was 1.10 to 1; and the average population deviation was 1.96 per cent.

By lowering significantly the population standards set by the Select Committee's plan, however cogent the reasons, the legislature heightened the possibility that the District Court might disapprove the entire plan, or at least amend it to restore the districts to the form recommended by the Joint Select Committee. That risk, however, was knowingly taken.

Numbered Seats

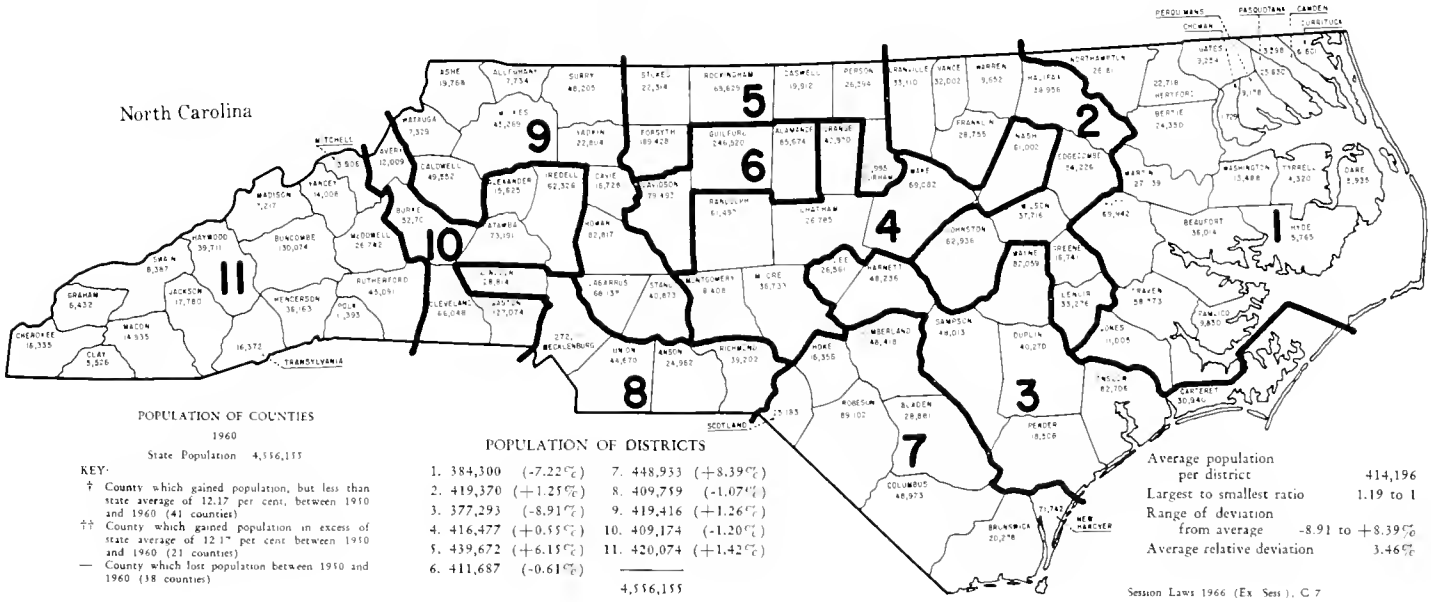
The bills providing for the numbering of seats in multi-member legislative districts (S.B. 5 for Senate seats, H.B. 2 for House seats) were the subject of intermittent discussion in the Senate and House from Tuesday through Thursday.

From the initiation of those proposals by the Select Committees in December, they had been the subject of confusion and criticism. Some newspaper editors understandably suspected that seat numbering was only a device to make possible a rotation system under which some small counties might retain representation to which their population did not entitle them. Groups which might find advantage in "single-shot" voting in multi-member districts objected to the termination of that privilege.

Uncertainty as to the purpose and practical effects of seat numbering was also apparent throughout the legislative debates on the matter. Some favored it because they thought it might work to the advantage of small counties; others opposed it because they thought it might work to the disadvantage of small counties. There was some apprehension that adopting the numbering procedure concurrently with the redistricting plans might jeop-

Figure 3

CONGRESSIONAL DISTRICTS, 1966-



Session Laws 1966 (Ex. Sess.), C. 7

ardize those plans in court. This confusion, uncertainty and apprehension, added to opposition on the merits and the lack of any large body of affirmative supporters, resulted in the defeat of both bills in their houses of origin. H.B. 2 was given an unfavorable report by the Committee of the Whole House on Thursday morning, and the Committee of the Whole Senate simultaneously voted to postpone S.B. 5 indefinitely.

A final effort, H.B. 15, would have provided for numbered House seats in a few representative districts. It gained a favorable report, only to be defeated on second reading in the House on Friday morning.

Constitutional Amendments

Soon after *Drum v. Seawell* was instituted, suggestions for the enlargement of the House of Representatives began to appear in the mistaken hope that raising the House to 150 or 200 members would make it possible for every county to retain independent representation. It soon became apparent that to have representation in that body in strict proportion to population would require some 1,000 Representatives, which no one advocated.

The extra session received six bills proposing state constitutional amendments, all of them directed at the alteration of Senate or House size with the purpose of moderating the losses of independent representation which the less populous counties and districts were destined to suffer. Only one bill, H.B. 14, got out of committee alive.

S.B. 8 and S.B. 9, sponsored by Senator Julian R. Allsbrook of Halifax County, both proposed to enlarge the Senate from 50 to 60 members. The former bill called for a popular referendum on the amendment early in March, 1966, and for the enlargement to become effective for the 1966 elections. If it had received legislative approval, further legislation to postpone the 1966 primaries and to reapportion the enlarged Senate would have been necessary. That bill was disposed of by indefinite postponement in the Committee of the Whole Senate on Tuesday. S.B. 9 was then introduced, differing from S.B. 8 only in that it would have submitted the amendment to the voters at the next general election. On Friday morning, it met the same fate as its predecessor by a vote of 17 for to 23 against.

In the House there were four bills for constitutional amendments: H.B. 6, which would have left the size of both houses of the General Assembly to be fixed by statute; H.B. 5, which called for a House of 150 seats, apportioned among senatorial districts on the basis of three House seats for one Senate seat; H.B. 7, which would have enlarged the House to 190 members; and H.B. 14, which proposed the enlargement of the House to 150 members, but without tying House apportionment to that of the Senate. All provided for a popular vote on their adoption at the next general election.

The first three bills, after some discussion in the Committee of the Whole House on Wednesday, were sent to subcommittee. On recommendation of the subcommittee, all three bills were reported unfavorably.

H.B. 14, introduced on Thursday by Representative George Wood of Camden and recommended by the subcommittee, became the vessel on which the hopes of the amendment advocates were embarked. Its chief supporters were members from counties which were losing their separate representation in the House, and a few of which stood to retain their separate Representatives if it became a part of the constitution. A majority of the 30 additional seats would have gone to populous districts which neither needed nor desired further representation.

The Committee of the Whole House voted a favorable report for H.B. 14 on Thursday afternoon. The state constitution requires an affirmative vote of three-fifths of the membership of each house to pass constitutional amendments—72 votes in the House of Representatives and 30 in the Senate. When the second reading vote was taken in the House on Friday morning, the Clerk tallied only 69 ayes. The Speaker delayed announcing the vote for several minutes while two Representatives were persuaded to switch their votes and an absent member arrived, adding three ayes to bring the total to exactly the 72 needed for passage, and 41 noes. Third reading approval also came on a 72-41 vote, and the bill went to the Senate.

In the Senate, rather brief argument as to whether the less populous or the more populous areas would be the gainers in an enlarged House preceded the second reading vote. Proponents could muster only 23 votes of the necessary 30; opponents cast 24 votes.

The defeat of bills for the enlargement of both the Senate and the House of Representatives made the prospect for such changes in the future exceedingly dim. Constituted as it is, this General Assembly had greater incentive to increase one or both houses than any succeeding session is likely to have. Yet no enlargement proposal gained a simple majority in the Senate and only with great difficulty was the favor of the necessary three-fifths obtained in the House. The small counties had lost even this small hope of shoring up their waning influence.

County Board Reapportionment

One more important—but in the context of the extra session almost incidental—bill deserves mention.

Forty-nine of the counties of the State, pursuant to local acts of the General Assembly, employ some form of districts or other restriction on residence of candidates in choosing their county commissioners. In two counties, commissioners are both nominated and elected by district; in ten counties, commissioners are nominated by district but elected by the county at large; and in 37 counties, both nomination and election are at large but candidates are required to reside in specific districts. Suits have been filed in the United States District Court for the Eastern District of North Carolina to require that in two counties (Carteret and Onslow), because of population disparities among districts, elections for county commissioners be held at large. At the time the extra session convened, these cases were awaiting trial.

Anticipating that the District Court would follow the lead of many other state and lower federal courts and apply to county boards the principle of representation in proportion to population, the North Carolina Association of County Commissioners sponsored H.B. 8, which was introduced by Representative David M. Britt of Robeson County. That bill authorizes the boards of county commissioners in the counties which employ some sort of districting system to determine whether, due to differences in the populations of districts, any citizens of the county are being denied equal representation of the board of county commissioners. Upon an affirmative finding, the board is then authorized either (1) to revise the districts and the apportionment of commissioners among them, or (2)

to require that subsequent commissioner elections be held at large within the county. Such action must be taken more than 60 days before the primary date in order to apply to elections held in that year. Only one of the potentially affected counties, Cherokee, obtained exemption from this measure.

(This bill, which was ratified as Chapter 2 of the acts of the extra session, is discussed more fully in an article entitled "Local Government Reapportionment," appearing in the February issue of *Popular Government.*)

Back to Court

Hearing

Pursuant to the decision in *Drum v Seawell*, it was necessary to submit to the District Court for approval the plans adopted by the extra session of the General Assembly. This was done on January 20, when the defendants filed a motion requesting the Court to approve the legislatively-adopted plans and dismiss the action.

The hearing on the defendants' motion was held by the three-judge District Court on February 4.

The plaintiff, Mr. Drum, offered only perfunctory criticism of the plans for Senate and House apportionment. His main fire was directed at the congressional redistricting plan, which he contended was invalid because of population disparities among districts, lack of compactness of district area, and bad faith on the part of the General Assembly in enacting the plan. He asked that the Court (1) devise and put into effect its own congressional districting plan, (2) adopt a tentative redistricting plan but give the legislature a chance to enact a new and more acceptable plan, postponing the 1966 primaries to allow this to be done, or (3) invalidate the legislature's plan, but allow the 1966 elections to proceed under it and require the 1967 General Assembly to redo the job.

The American Civil Liberties Union filed a supplemental brief *amicus curiae* in which it supported the defendants' motion to dismiss the action as to the state legislative apportionment plans. It asked that the congressional redistricting plan be invalidated because of population deviations coupled with lack of compactness of some districts, but recommended that the 1966 primaries be allowed to proceed under the invalid plan, that jurisdiction of the case be retained, and that the 1967 General Assembly be required to revise the districts to comport more fully with constitutional requirements.

A group of nine residents of the present Fourth and Sixth Districts petitioned to intervene in the *Drum* action in opposition to the congressional redistricting plan. Their criticisms of the plan were based on alleged population disparities among districts, non-compactness of districts and irrationality of district design, and the policy of protecting incumbent congressmen which the Joint Select Committee and the General Assembly followed. Protection of incumbents, this group contended, was an approach so improper as to require invalidation of the entire plan, irrespective of other factors. They asked that the Court invalidate the plan before it and either draw its own congressional redistricting plan or allow the General Assembly to enact a plan more satisfactory to their purposes in time for the 1966 elections. Their complaints seemed to be more addressed to the political than to the legal defects of the plan.

In support of the plans under review, counsel for the defendants contended that the General Assembly had acted promptly, in good faith, and in conformity with constitutional standards in carrying out the tasks assigned it by the District Court. The population statistics of legislative apportionment plans adopted by other states were cited to show that the North Carolina plans measured up well in that respect.

Decision

On February 18, the United States District Court issued its order and opinion in *Drum v. Seawell*. The Court approved the Senate and House reapportionment plans and dismissed the action with respect to them. It held that the congressional redistricting plan did not meet the constitutional test, but permitted the 1966 primaries and general elections to proceed under it and required that a new plan be adopted by the General Assembly of 1967.

The District Court opened its opinion by commending the General Assembly and its leaders "for the expeditious and efficient manner in which they have sought to accomplish a very burdensome and complex task." It denied the petition for intervention filed by citizens of the present Fourth and Sixth Districts who sought immediate invalidation of the congressional redistricting plan.

The plans for the Senate and House of Representatives were dealt with briefly. The statistics of the new plans were recited, and it was found that "the disparities in population reflected by these figures are not so extreme as to violate constitutional requirements . . ." The districts were found to be reasonably compact. The Court noted that for 11 counties in the northeastern section of the State and for Halifax, Guilford, and Watauga Counties, significant population disparities in one house were not balanced but paralleled by similar disparities in the other house. While these factors rendered the plans, taken together, constitutionally suspect in the Court's view, it found that they did not constitute invidious discrimination. Finally, the expectation was expressed that the 1971 reapportionment will erase "the last vestige of unequal representation. . . ."

Thus the litigation is at an end with respect to the state legislative representation plans, and the 1966, 1968, and 1970 elections for members of the General Assembly may proceed in accordance with the plans enacted in the extra session.

Turning to the congressional redistricting plan, the District Court observed that in *Reynolds v. Sims*, 377 U.S. 533, 577 (1964), the Supreme Court had suggested that stricter standards of population equality may be required of congressional districts than of state legislative districts. The constitutional requirement, said the District Court, is "practical and rational equality" of population among districts which recognizes "only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination."

The conceded purpose of the legislature to protect incumbent Congressmen by avoiding putting any two of them in the same new district, and the effort to change the existing districts as little as necessary in order to bring the plan "within presumed minimum acceptable mathematical percentages," led the Court "to conclude that the plan does not come 'as nearly as practicable to equal population.'" The two changes which the General Assembly

made in the plans submitted to it by the Joint Select Committee were taken as further evidence of overemphasis on these factors. Here the Court seems to be saying that the population deviations among districts are unacceptably large and that the protection of incumbents and minimum necessary change policies produced those deviations but do not justify them.

The Court, however, expressly refused to rule on the inherent legitimacy of the legislative policy of protecting incumbents. "We simply hold," said the Court, "that it may not predominate over the requirements of practicable equality, *and we think that compactness and contiguity are aspects of practicable equality.*" (Emphasis supplied.) Continuing, the Court said:

> The tortuous lines which delineate the boundaries of many of the congressional districts under the proposed plan, the resulting lack of compactness and contiguity, and the failure to achieve equal representation for equal numbers of people as nearly as practicable compels [*sic*] us to hold that the congressional apportionment is constitutionally invalid.

The introduction of compactness and contiguity as factors in the test of equality of representation appears to be a new development in congressional redistricting law. All other decisions stemming from *Wesberry v. Sanders*, 376 U.S. 1 (1964), seem to have been decided strictly on disparities in district populations. But here the Court lumped together lack of compactness, lack of contiguity, and population inequalities as contributory causes of the failure of the plan in question to reach "practicable equality" among congressional districts. A footnote quotation from *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (which the District Court incorrectly characterized as a "congressional apportionment" case), suggests that the Court viewed the 1966 congressional redistricting plan as a "crazy quilt," completely lacking in rationality, one which could have been invalidated on that ground alone.[30]

The District Court acted in an almost off-handed way in coining the principle that "compactness and contiguity are aspects of practicable equality . . ." required by the federal constitution. It offered neither evidence nor argument that non-compactness and non-contiguity affect either the value of a citizen's vote or the effectiveness with which he is represented. Within the limited framework of the previous judicial concern with the *mathematical* value of the vote, compactness and contiguity seem irrelevant. Viewing the contest as one involving the right to equally effective representation, these factors can be argued to be relevant, but this the District Court did not do. Thus until the Court's views are further expounded, the legislature may have difficulty determining why or in what degree compactness and contiguity of territory are considerations to be given weight in addition to population equality in testing the constitutionality of district plans.

Recognizing the good faith exercised by the General Assembly in adopting the congressional districting plan, the judicial obligation to defer to the legislature in this field, and the nearness of the 1966 primaries, the District Court stayed its mandate to allow the 1966 congressional elections to go forward under the 1966 plan. Jurisdiction of that feature of the case was retained, however, to insure that no further elections will be held under the 1966 plan and to permit the reapportioned 1967 General Assembly to revise the districts prior to July 1, 1967. After that date, the case may be reopened on the court's own motion or on application of any party to the suit.

What guidance did the Court give those who must draw the 1967 congressional redistricting plan? Very little of an affirmative nature. While the District Court noted the differences between the population standards achieved by the plan recommended by the Joint Select Committee and that adopted by the General Assembly, it did not indicate that but for the two legislative amendments the plan would have been judicially approved. In fact, it stated that the Committee plan also lacked compactness and contiguity. Thus the General Assembly of 1967 knows only (1) that the 1966 plan is invalid, (2) that the 1967 plan must achieve indefinitely higher standards of population equality than does the 1966 plan, (3) that any significant departure from equality of population among districts must be justified on some basis more acceptable to the Court than protecting sitting Congressmen or minimizing changes in existing districts, and (4) that even if strict population equality is achieved, it probably must be accompanied by significantly greater compactness of district territory and by contiguity greater than that achieved by the touching of two counties at the point of intersection of county lines.

It is possible that by 1967, other litigation or congressional legislation will have established more clearly the pertinence and meaning of compactness and contiguity in drawing congressional districts, and the expected levels of population equality. In any event, one can safely predict that a chief occupation of legislators next year will be congressional cartography.

Rehearing Asked

When the decision of the District Court was announced, the plaintiff, Mr. Drum, stated that "it's almost exactly what I asked for. I believe . . . [the Court's] decision was reasonable in view of the proximity of the primary election."[31] The litigation seemed to be at an end until after the 1967 legislative session.

On February 25, however, the Supreme Court of the United States decided *Swann v. Adams*, 34 Law Week 3291, dealing with the apportionment of the legislature of Florida. That litigation had begun in mid-1962, and its tedious course—including at least four District Court decisions (one reversed by the United States Supreme Court in 1964), a couple of state supreme court cases, several regular and special sessions of the Florida legislature which attempted to deal with reapportionment, and two reapportionment amendments rejected by the Florida voters—reflected a dilatory legislature and an undemanding District Court. The most recent District Court decision (in December, 1965) had invalidated the 1965 reapportionment legislation, but allowed it to be used (with minor judicial changes) for the 1966 elections and ordered the 1967 legislature to redo the job. Plaintiff appealed and the Supreme

30. Here it might be pertinent to recall that the District Court in its original opinion in *Drum v. Seawell* invalidated the existing congressional districting plan on Fourteenth Amendment grounds, not on the basis of Article I, Sec. 2, of the federal constitution. No federal constitutional provision was cited in the February opinion. This suggests that the District Court considers compactness and contiguity also to be constitutionally required of state legislative districts. It at least noted that the Senate and House districts "appear to be reasonably compact."

31. "Decision Satisfies Instigator of Suit," Greensboro Daily News, Feb. 19, 1966.

Court reversed the decision of the District Court, noting that the litigation was already almost four years old and that to allow the decision below to stand would mean that not until 1969 would a validly constituted legislature sit in Florida. Said the Court, "we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years." Thus a valid reapportionment plan must be enacted in time for the 1966 elections.

The plaintiff in the North Carolina litigation, Mr. Drum, acting in concert with and at the instigation of the group which earlier had sought to intervene in the congressional redistricting aspect of *Drum v. Seawell*, petitioned the District Court on February 28 to rehear the case. The recent decision in *Swann v. Adams*, it was contended, requires the District Court to reopen the North Carolina case and revise its February 18 order so as to effect an immediate realignment of the congressional districts in compliance with the constitution. (It is not clear from the pleadings whether an order directing the legislature to redistrict or a court-devised redistricting plan was sought.) The defendants asked that the petition for rehearing be rejected.

Rehearing Denied

On March 8, the District Court denied the petition for rehearing. The Court found adequate differences between the facts of the Florida and North Carolina cases to justify a difference in result. The distinction was based chiefly on the promptness and good faith with which the North Carolina General Assembly had acted, in contrast with "the failure of the Florida legislature and the District Court to take positive action after four years of stalling litigation."

The plaintiff and those seeking to intervene in the *Drum* case on March 11 declared their intention to appeal this decision to the United State Supreme Court. The appeal was pending as this article went to press.

Retrospect and Prospect

With state legislative apportionment settled for the rest of this decade and (subject to adverse action by the United States Supreme Court) the fate of the 1966 congressional redistricting plan known, it might be appropriate to offer a few observations on the work of the extra session and on some resulting possibilities for the future.

Retrospect

The General Assembly fully earned the Governor's commendation that it "faced a trying task with courage, reason and dispatch."

Some 40 state legislatures have had to reapportion their own membership on the basis of population in the last four years. Perhaps half that number have had to revise the congressional districts in their states. North Carolina is the only state which has been directed by the court to do both jobs at once—to reapportion both House and Senate and revise congressional districts in a single session. The General Assembly not only met that challenge, but it probably established a national track record for the time required: 45 days elapsed from the date of the decision of the District Court to the ratification of the last act of the extra session. The population standards of the plans which it approved, especially those for the Senate and House, compare favorably with the plans adopted by other states under more leisurely circumstances. And voluntarily, it enabled counties to reapportion their governing boards on the basis of population.

As one looks at other states whose legislators have seemed more bent on proving their vocal endurance than their ability to act, the question arises, how did North Carolina manage to do the job so quickly, especially the radical redistribution of voting power in the House of Representatives, and with hardly a harsh word being flung at the courts, much less at fellow legislators?

Three answers come easily.

First, political leadership. Governor Moore, Lieutenant-Governor Scott, and Speaker Taylor made it clear from the beginning of the *Drum* action that while they regretted the prospect of a fundamental change in legislative apportionment, the State would abide by the decree of the Court, and would do so without deviousness or delay. When the Court acted, the State's response was swift: no time was frittered away in an appeal which could only have led to affirmance of the District Court's decision and might have resulted in the invalidation of arrangements for the May primaries. Committees of legislators were appointed to prepare plans for legislative consideration. The presiding officers took personal charge of those committees, made it clear what was expected of them, then led and pushed the committee members to the completion of their tasks. Throughout the extra session, they maintained steady direction of the proceedings, strengthened by the encouragement of the Governor and backed by legislative leaders.

Second, a strong sense of legislative responsibility. Unwelcome as their assignment was to many of them, the members of the General Assembly accepted the validity of this warning, given by the Select Committee on Reapportionment of the House in its report:

> Protracted uncertainty and turmoil have been visited upon the legislatures of several of our sister states by their inability or unwillingness to execute promptly, in response to court orders, their responsibility for reapportioning their membership on the basis of population. This is ample warning that the General Assembly of North Carolina should deal with this difficult matter thoroughly, in a good faith effort to meet constitutional standards, and with dispatch.

In part, perhaps, members wanted to affirm the legislature's ability to act responsibly and effectively. In this they were not establishing a new tradition but reaffirming an old one. The 1963 reapportionment of the Senate greatly facilitated this achievement.

Third, the public was amply informed. Few recent public issues in the State have been so fully and accurately reported and commented on by the news media as the issue of reapportionment. The principal newspapers of the State encouraged the legislature to act, and while editorially they offered criticism of some legislative actions, they were equally ready to acknowledge the legislative achievements.

One factor that no observer of the extra session could ignore was the intense county-mindedness of many legislators, especially—but not only—the members from the smaller counties. Here they were not concerned so much with counties as governmental units and providers of governmental services as they were with the politi-

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Smith and the Sudden Service Drive-In

By William A. Campbell

City and county tax collectors in North Carolina are often faced with the problem of trying to collect current, and sometimes delinquent, taxes from a small, closely held corporation that has ceased doing business and no longer has any assets. The problem generally arises from factual circumstances similar to the ones presented in the following hypothetical case:

John Smith, a salesman at the local Chevrolet dealer's, has decided to go into business for himself by setting up a drive-in restaurant. (I have chosen a small restaurant for this illustration because it is a business field that can be easily entered by one person with a small amount of capital and limited credit resources. Small clothing stores and used car lots are also in this category. The easiness of entry tends to make competition keen in these fields, and those who find it easy to enter business for themselves with only a little capital may find it easy to leave.)

Mr. Smith has heard of the advantages of incorporation, such as limited liability and lower federal income tax rates, and proceeds under Chapter 55 of the General Statutes to form the Sudden Service Drive-In, Inc. The three incorporators required by G.S. 55-6 are Mr. Smith, Mrs. Smith, his wife, and Mr. Jones, his father-in-law. After the corporation is organized for business, Mr. Smith purchases for a nominal consideration the shares owned by his wife and father-in-law. He now has complete control over the business, just as though it were a sole proprietorship.

Sudden Service Drive-In, Inc. commences doing business in December, 1963. It owns all of the personal property used in the business—almost all of which consists of fixtures and food supplies—but rents the building that it occupies. The corporation owns no personal property unconnected with the business and no real property. In January, 1964 Smith lists Sudden Service's personal property for taxes and signs the list in the name of the corporation. At the same time, Smith makes a separate listing for himself as an individual of several items of personal property that he owns in his own name and a vacant lot of which he is sole owner.

By December of 1964 Sudden Service has not paid the taxes on its property and Mr. Smith, speaking for the corporation, tells the collector that business has been bad and that a hardship would be worked upon the corporation if it were forced to pay the entire tax bill. The collector accepts a partial payment. In January, 1965, Smith again lists for taxes both his own and the corporation's property. On March 1, 1965, the Sudden Service ceases doing business, sells all of its property to the Ajax Restaurant Supply Company, and Mr. Smith goes back to work as an automobile salesman.

At this point the collector is faced with the problem stated in the first sentence of this article: A closely held corporation owing taxes has disposed of all its property and has ceased doing business. The remainder of the article will be concerned with the remedies available to the collector for enforcing payment of the unpaid taxes owed by the Sudden Service Drive-In, Inc. Through a discussion of this example it is hoped that some general principles and procedures can be developed that will be of assistance to collectors whenever they are faced with collection problems of this kind, no matter what type of business the closely held corporation is conducting.

In the Sudden Service case that I have described, it is obvious that upon quitting business the corporation did not choose one of the formal dissolution procedures established by Article 9 of Chapter 55 of the General Statutes and that it still formally exists as a corporation. If the corporation had followed the formal dissolution procedures, the tax collector would have had notice of the dissolution and liquidation and adequate time in which to present the tax claim. A copy of the articles of dissolution would have been filed in the clerk of the superior court's office for the county in which the corporation had its registered office (G.S. 55-4), all creditors of the corporation would have been mailed notice of the dissolution (G.S. 55-119), and notice of the dissolution would have been published for four successive weeks in a newspaper in the county in which the corporation had its registered office (G.S. 55-119). Furthermore, the Secretary of State could not have filed a certificate of completed liquidation until all liabilities and obligations of the dissolved corporation had been discharged (G.S. 55-121). Had these formal dissolution and liquidation procedures been followed, the tax claim would have been protected.

Remedies When the Collector Acts Within 60 Days of The Transfer

Assume first that when Sudden Service transferred its property to Ajax and ceased doing business on March 1, 1965, the collector learned of the transaction on March 15, that is, within 60 days of the transfer or termination—a point of great importance. The collector's arsenal of remedies is contained in G.S. 105-385 and G.S. 105-340(b). G.S. 105-340(b) provides that if after the listing date but before the first Monday in October the owner of a retail or wholesale business sells his stock, fixtures, or business or simply quits doing business, the tax lien attaches to this business property as of the date of the transfer of the property or the termination of the business. The purchaser of the stock, fixtures, or business is required by G.S. 105-385(g) to withhold a sufficient amount of the purchase money to pay the taxes made a lien upon the property by G.S. 105-340(b), and if the taxes remain unpaid at the end of the 30-day period allowed by G.S. 105-385(a)(2) he shall be personally liable for their payment. G.S. 105-385(g) also requires that when a retail or wholesale merchant makes a transfer of his stock or fixtures or terminates his business he must report the transfer or termination to the tax supervisor within 30 days. This requirement can be of valuable assistance to the collector in keeping him apprised of current business transfers and termi-

nations. The collector should encourage the tax supervisor to inform wholesale and retail merchants of this requirement, and both the collector and supervisor should instruct their staffs to stay alert for signs of possible business transfers or terminations. The collector would be well advised to pay a monthly visit to the supervisor's office to check his records for reports of business transfers or terminations.

When a retail or wholesale merchant sells his fixtures or stock or ceases doing business he is required to pay the unpaid taxes on the property for prior years and the taxes to become due for the current year within 30 days of the transfer of the property or the termination of the business. [G.S. 105-385(a)(2)]. If at the end of the 30-day period neither the seller nor the purchaser has paid the taxes, the collector is authorized to levy upon the property subject to taxation or upon any other personal property of the seller *or* of the purchaser, and the levy can be made before the first Monday in October for taxes to become due for the current year, [G.S. 105-385(a)(2)]. This is an exception to the rule that personal property may be proceeded against only after taxes are due; however, if the levy is for the satisfaction of the lien for taxes to become due, it must be made within 60 days of the transfer or termination. If it is for taxes already due, the levy may be made at any time, [G.S. 105-385(a)(2)]. Thus, the importance of taking action within 60 days can be seen. If more than 60 days are permitted to elapse, the collector has lost his remedies under G.S. 105-385(a)(2) for the collection of taxes to become due.

Let us assume that 30 days have elapsed since the Sudden Service Drive-In transferred its property to the Ajax Restaurant Supply Co. and went out of business, and that the taxes owed by Sudden Service have not been paid. The collector has called on Mr. Smith and has been informed that the corporation has no assets and cannot pay the taxes. The collector's next step should be to call on the Ajax Company to determine whether it has withheld a sufficient amount of the purchase money to cover the taxes. If it has, the collector's problem is solved; if it has not, he must examine his remaining enforcement remedies and decide which ones can be employed expeditiously and successfully.

In discussing the collector's remaining remedies, I have attempted to progress from what seemed to be the most convenient and expeditious remedy to the least convenient—a method of presentation that tends to put the remedies in the form of alternatives, that is, "if this remedy is unavailable then that one should be tried, etc." I have chosen this method of presentation because it appears to me that this is the way most collectors would proceed, but it should be kept in mind that these remedies are apparently independent of one another, and the collector may choose to pursue any one of them regardless of the availability of others.[1]

Against the Purchaser

If the property transferred by Sudden Service to Ajax is still identifiable and within the state, the collector would be well advised to make a levy on it and sell it for satisfaction of the tax claim pursuant to G.S. 105-385(c). If the property is no longer identifiable or has been sent out of the state, the collector still has two remedies against the purchaser, Ajax. He may levy upon any tangible personal property owned by Ajax pursuant to G. S. 105-385(a)(2), or he may institute a civil suit against Ajax based upon the personal liability for the taxes that it incurred under G.S. 105-385(g). Note that when proceeding against property of the purchaser, whether for taxes already due or to become due, the collector can only use levy and not attachment or garnishment. If, of course, the collector proceeds against property other than that upon which the taxes were assessed, whether in the hands of the purchaser or the seller, the tax lien will be inferior to all prior valid liens, [G.S. 105-376(c)].

Against the Seller

Suppose that all of the collector's remedies against the purchaser are ineffective in these circumstances or that they would be effective but the collector as a matter of policy prefers to proceed against the seller, the Sudden Service Drive-In, Inc. The collector's problem has now entered the area of corporation law: Can he disregard the existence of the Sudden Service Drive-In, Inc. as a corporation and proceed against property owned by Mr. Smith, the owner and controller of the corporation, for satisfaction of the tax claim? The answer to this question is almost certainly yes.

As a general rule, a corporation is looked upon as something separate from its shareholders; its contracts and debts are not their contracts and debts, and its torts are not theirs.[2] As Mr. Justice Holmes has stated it, once the corporate form of business is chosen, a "nonconductor" is interposed to insulate the shareholder from those having claims against the corporation.[3] The law will not lightly disregard the corporate entity, and exceptions to the general rule of recognition of a separate corporate existence are few.[4] When, however, the concept of corporate personality is used as a device to perpetrate fraud, to evade the law, or to escape obligations, it will be disregarded.[5] "Courts will not sanction a perversion of the concept to improper uses and dishonest ends."[6]

Examples of cases where the courts have disregarded the corporate entity to prevent evasion or frustration of a duty or obligation are: 1) where an individual under a contract not to compete in a certain area tries to start doing business in that area in corporate form; 2) where an individual with an exclusive selling contract starts doing business in a corporate

1. The remedies are "apparently" independent of each other because G.S. 105-385 does not expressly require that certain remedies be exhausted before others may be looked to. In view, however, of the North Carolina Supreme Court decisions concerning civil suits for the collection of taxes and the extraordinary nature of such a remedy, it is felt that the collector should turn to subsection (g), which imposes a personal liability upon the purchaser for payment of the tax, only after exhausting his other remedies. For a discussion of this subsection, see Lewis, *Property Tax Collection in North Carolina* (revised and enlarged 1957) 208-212.

2. See Annotation, 1 A.L.R. 610 (1919).

3. Donnell v. Herring-Hall-Marvin Safe Company, 208 U.S. 267, 273 (1908). As with most of Mr. Justice Holmes's pronouncements on the realities behind legal concepts this one merits quotation in full: "Philosophy may have gained by the attempts in recent years to look through the fiction to the fact and to generalize corporations, partnerships, and other groups into a single conception. But to generalize is to omit, and, in this instance, to omit one characteristic of the complete corporation, as called into being under modern statutes, that is most important in business and law. A leading purpose of such statutes and of those who act under them is to interpose a nonconductor, through which, in matters of contract, it is impossible to see the men behind."

4. Annotation, 1 A.L.R. 610 (1919).

5. Cataldo, Limited Liability With One-Man Companies and Subsidiary Corporations, 18 Law and Contemp. Prob. 473, 480 (1953).

6. Ibid.

form in order to sell to anyone; 3) where a corporation attempts to recover the proceeds of a fire insurance policy and the person who caused the fire is in sole control of the corporation; and 4) where a person has organized a corporation and transferred his property to it in order to put that property beyond the reach of creditors.[7] In almost all cases where courts have disregarded the corporate entity the corporation was wholly owned and controlled by one or two persons and the business affairs of the corporation were not clearly distinct from those of the controlling shareholder,[8] although this unity of interest or alter ego principle is not articulated by all of the courts that have dealt with the problem. When a court disregards the corporate entity it does so only for the purposes of a particular case; the corporation continues to exist in all other respects.[9]

The North Carolina Supreme Court has shown a willingness to follow the general principles of corporation law discussed above and has disregarded the corporate entity when necessary to prevent unfairness or injustice. In *Kramer v. Old*,[10] the defendants had sold their milling business and signed a covenant not to compete with the purchaser by carrying on a similar business in the vicinity of Elizabeth City. They then formed a corporation to carry on the business within the prohibited area. The court held that it was a violation of the contract for the defendants to take stock in, or help to organize, or manage a corporation competing with the purchaser. The court further stated that equity does not permit the defendants as a corporation to do what they were prohibited from doing as individuals.

In the *Park Terrace* case,[11] where the primary question was what persons could properly bring suit, the court held that when one person acquires all of the stock of a corporation, the corporation then becomes dormant and "exists only for the purpose of holding legal title of the property for the use and benefit of the single stockholder." The single shareholder was not permitted to use the corporate form to cloak his actions as an individual. Although the precise holding of this case has been made obsolete by statute, the decision is still significant in that it demonstrates the North Carolina court's willingness to disregard the corporate entity when equity demands that such action be taken.

When the case of John Smith and the Sudden Service Drive-In, Inc. is examined, it seems clear that Smith is trying to "pervert the concept of the corporate entity to improper uses and dishonest ends." Certainly when he allows his corporation to liquidate iself without satisfying all creditors, including governmental units holding tax claims against it, and then refuses to satisfy those claims himself, he has attempted to use the concept of a separate corporate personality to avoid lawful obligations. In such a situation the North Carolina courts would most likely allow the collector to disregard the corporate entity and to proceed against the property of the individual controlling the corporation. There would be no hesitation or qualification in making this prediction were it not for some of the language in G.S. 105-385. G.S. 105-385(c) speaks of levying upon the personal property of the *taxpayer*, and G.S. 105-385(d) speaks of using attachment and garnishment against property that belongs to the *taxpayer*. The taxpayer in our example is still the Sudden Service Drive-In, not Mr. Smith. Thus, a strictly literal reading of the statute would seem to prevent the collector from disregarding the corporate entity. It is felt, however, that if the situation otherwise warrants disregarding the separate corporate personality, the North Carolina courts would give the term "taxpayer" in G.S. 105-385(c) and (d) a broad reading and hold that the real taxpayer is Mr. Smith, the person controlling the corporation.

What remedies, then, does the collector have for enforcing the corporation's tax bill against Mr. Smith? He has exactly the same remedies that he would have had against the corporation if it had retained any assets. For taxes to become due, he may levy upon any of Mr. Smith's tangible personal property within the taxing unit's jurisdiction [G.S. 105-385(c)], but he may not use the remedies of attachment and garnishment, [G.S. 105-385(a)(2)]. For taxes already due, he may levy upon any of Smith's tangible personal property, [G.S. 105-385(c)], or he may proceed against his intangible personal property by way of attachment and garnishment, [G.S. 105-385(d)].

There is, however, one limitation upon the remedies available to the collector for proceeding against Mr. Smith that should be noted. If the corporation had owned any real property in the taxing jurisdiction, the lien for its personal property taxes would have attached to the realty as of the date upon which property is listed, G. S. 105-340(a), and the collector could have foreclosed upon that realty in satisfaction of the lien for the personal property taxes, G.S. 105-387, -391, -392, -414. The lien of the corporation's personal property taxes did not, however, attach to any of Mr. Smith's real property. Although the corporate personality of the Sudden Service Drive-In may now be disregarded so that the tax claim can be enforced against personal property belonging to Mr. Smith, at the time the corporation's property was listed for taxes it was a going concern and its separate personality had to be recognized. At that point in time the "nonconductor" between Mr. Smith and the tax claim had to be respected. Therefore, the lien of the corporation's personal property taxes did not attach to any of Mr. Smith's real property at the time of listing, and in view of the wording of G.S. 105-340(a)[12] it is unreasonable to expect that any court would hold that the lien could attach to his realty at a later date. The result of this is that the collector cannot proceed against any of Mr. Smith's real property in order to satisfy the personal property tax claim against the corporation.

Remedies 60 Days After the Transfer

Having discussed the collector's remedies when he acts within 60 days of the transfer of the corporation's property or the termination of business, there remain for examination his rem-

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7. Horowitz, Disregarding the Entity of Private Corporations, 15 Wash. L. Rev. 1, 204 (1940).

8. See Fuller, The Incorporated Individual: A Study of the One-Man Company, 51 Harv. L. Rev. 1373 (1938).

9. Horowitz, Disregarding the Entity of Private Corporations, 14 Wash. L. Rev. 285, 290 (1939).

10. 119 N.C. 1, 25 S.E. 813, (1896).

11. Park Terrace, Inc. v. Phoenix Indemnity, 243 N.C. 595, 91 S.E.2d 584 (1956). This case had the unfortunate effect of eliminating the one-man corporation as a business entity in North Carolina, and it was expressly overruled by the Business Corporation Law enacted in 1955, G.S. 55-3.1.

12. G.S. 105-340(a) states: "The lien of taxes levied on property and polls listed pursuant to this subchapter shall attach to all real property of the taxpayer in the taxing unit *as of the day upon which property is listed* . . ." (Emphasis added.)

The Training School and the Child

By Hoyt O. Sloop

[*Editor's note: Mr. Sloop is assistant superintendent at Jackson Training School, Concord.*]

There still remains in the mind of the general public that "training school" is a term for a reformatory or "reform school", and unfortunately motion pictures, fiction, and feature magazines have done little to dispel this misconception on the part of the public.

Formerly the average training school was little more than a reformatory, but even though conditions have changed, little has been done to make the public aware of these changes. During the past few decades, many new practices have been initiated in training schools the country over, and youths in the schools today have opportunities heretofore undreamed of, and actually far superior to those offered in some public schools.

With the current emphasis on good public relations, it is fitting that the public should know more of what is taking place in North Carolina's training schools where those unfortunate children who cannot succeed in the public schools, and who are rejected by their communities, are sent through court commitment for periods of adjustment before return to the community. Not only is the public entitled to know about this, but there rests upon the public a responsibility to aid and foster the work of the training schools. Certainly it is necessary that the public should be acquainted with the training school methods and procedures before being expected to discharge their responsibilities.

Institutions for the training of delinquent youth are an integral part of the fabric of our society. It may be said of them as of other units in our social structure that the past is prologue; what has gone before influences what is today, and both the past and the present profoundly affect the future.

The Child

All children committed to training schools are fearful, hostile and resent most, if not all types of authority. They have had little experience in satisfying human relationship with their parents or other adults and they have struck out at a world that was unkind, unfair, and unable to understand their needs.

Public, private and religious agencies have attempted to help these children and have, for sundry reasons, failed to help them adjust to a life inside the limits we call law. The community, with its churches, schools, and other agencies that did not have the resources to cope with this child, whom we believe is a victim of circumstances beyond his control, have until recent years pointed a finger of scorn at training school programs. Intentionally or not, the same person, agency, community or society forgets too quickly or easily that the child in the training school failed first and surely before he was committed to the training school.

No one seems to love or understand the delinquent child and as a result, programs provided for diagnosis and treatment for him have been wanting in many schools. Not over indulged with the aids or tools to provide the program or meet the needs of the delinquent child, training schools have tended to show their best and cover up these areas that have been inadequate.

The School

Training schools for years have had to care for children whose problems were such that no one wanted them. Just what role the training school is requested to play in such a program is very evident by the high enrollment in these schools throughout the State. Until enough residential treatment programs are developed, the training schools must continue to be the port in the storm.

The manner in which a youngster is received and the guidance and help he gets during his early stay in the training school will determine to a great degree, the success of his future adjustment in the program. No youngster comes to the training school willingly, nor does he apply for admission because his father graduated some years ago.

In a great many instances the training school has been used as a threat to keep the youngster in school, or out of further trouble. When he does finally make it, he expects the worst. He is likely to be suspicious and hostile on admission. He is frightened and unsually unhappy.

The Juvenile Court

The juvenile court and the training school are very closely related in the correctional process. Each has for its primary objective the same goal: to help children in trouble.

Although the techniques applied may differ in the court and the training school, the fact that they both focus their attention on trying to meet the individual needs of the child sets up a kinship between them. This kinship should develop into a harmonious working relationship between these two community agencies as they serve their common cause: children.

The juvenile court in planning a program for a child should examine all resources available to it before making a disposition. The training school is one of these resources, Unfortunately, in some instances, the training school is the last resort rather than a resource.

It would be far better for the child if the training school was used for its strengths, rather than for its reputation as the last stop on the line, because in many instances by the time a child reaches a training school he is so damaged there is little hope of his ultimate recovery.

All courts, agencies, and personnel who work with delinquent children and who have some share in the responsibility of having to formulate a program for an adjudicated delinquent should have a thorough knowledge of the services available in the training school program.

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The District Court Prosecutor

By C. E. Hinsdale

This is the last of a series of articles in this publication dealing with the officers of the Judicial Department under the 1962 amendment to the State Constitution, and the Judicial Department Act of 1965. Earlier articles dealt with the Administrative Officer of the Courts, the District Court Judge, the District Court Magistrate, and the Clerk of Superior Court. The District Court Prosecutor has been left until last, not because he occupies an unimportant office, but because the functions of this office are not significantly changed from that of the present typical recorder's court solicitor, and because fewer long-range preparations are needed for activation of this office than for the others.

While the prosecuting *function* continues unchanged, the prosecuting *office* and *organization* are radically altered. These changes, discussed below, have been adopted with a view to achieving greater efficiency and uniformity throughout the State in the administration of the criminal law.

Constitutional Provisions

The new Judicial Article of the State Constitution, adopted in 1962, provided for the creation of a three-level General Court of Justice: the Appellate Division, consisting of the present Supreme Court; the Superior Court Division, consisting of our present superior courts, substantially unchanged; and a District Court Division, which is to replace, uniformly and statewide, our present hodgepodge of local courts inferior to the superior court. Replacement starts in six judicial districts, embracing 22 counties, in December, 1966, and is to be accomplished in all counties by December, 1970.

Only one sentence in the new Judicial Article refers to the prosecution of crimes in the District Court Division. Section 16 (2) specifies that "Criminal actions in the District Court division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State." The details were left to the General Assembly, which took implementing action in 1965.

Judicial Department Act of 1965

In the Judicial Department Act of 1965 (Chap. 310, S. L. 1965), the legislature sought to provide for a uniform statewide prosecutorial system which would be an improvement over present arrangements. Currently there are approximately 170 city and county courts in the State with misdemeanor jurisdiction. Nearly all of these courts have an officer, usually called a solicitor, who prosecutes the criminal docket in the name of the State. With a very few exceptions limited to the larger cities, the solicitor is a part-time official, typically engaged in "prosecuting" one or two half-days a week, and pursuing the private practice of law the remainder of his time. He is paid locally, and thus necessarily subject in some degree, no matter how subtly or unconsciously, to undue "pocketbook" influences. The degree of influence may vary with his status as an elected or an appointed official. Since his career interests place his part-time solicitorship in a secondary role, he is frequently not as available to local law enforcement officials for advice as the best discharge of his public function might require. More often than not he is dependent upon approval of the local citizenry for retention in office —in many cases as often as every two years—a situation which renders more difficult the firm and impartial enforcement of the criminal laws.

In seeking to recommend a better system to the legislature, the Courts Commission, a legislatively-created body charged with making recommendations for implementation of the constitutional amendment, first examined the office of superior court solicitor. Consideration was given to merging the prosecuting functions of the superior and district court divisions—creating a single solicitor, with assistance as needed, to represent the State in the prosecution of *all* crimes in the trial courts of the State. But here two major disadvantages were noted. First, a superior court solicitor is a part-time official, allowed to practice civil law when not engaged in his solicitorial function, and the Courts Commission felt that the time was ripe for placing the prosecuting function in a full-time official. Secondly, and of even greater difficulty, there are fewer solicitorial districts than there are judicial districts, leading at times to conflicting sessions of criminal court, confusion, and waste. The Courts Commission felt that efficiency and sound principles of organization demanded that this system not be extended to the district courts. District court lines, therefore, for both judges and prosecutors, were made coterminous with superior court judicial district lines. (Revamping of the solicitorial system to eliminate these disadvantages was considered, but delayed pending further study and an opportunity to observe the operations of the new district court.) To lessen the possibility of adding to the confusion, the title of *prosecutor* rather than solicitor was deliberately chosen for the district court.

Given these two basic decisions—that district court districts would be coterminous with superior court judicial districts, and that the district court prosecutor would be a full-time officer of the court—many lesser details fell readily into place. These are set out in Art. 15 of the Act.

A decision to have the senior regular resident superior court judge *appoint* the prosecutor evoked some opposition in the General Assembly, but in crying that appointment rather than election was an unwholesome departure from democratic traditions, the opposition ignored the facts: currently over a third, or about 55, of our present lower court solicitors are appointed. The legislature felt that the superior court judge would have every professional incentive to appoint the most qualified man available, and that freedom from the periodic pressures of getting re-elected might result in a firmer and fairer policy of prosecution. A four - year term, to correspond with that of the solicitor and to reduce turnover in the office, was prescribed.

In addition to prosecuting the misdemeanor docket in his district, the prosecutor is required to advise the officers of justice in his district, and to "cooperate with the superior court solicitor in criminal actions arising in the district court." Presumably the

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Planning and Zoning

By Robert E. Stipe

Several weeks ago I had an opportunity to participate in a panel discussion at the annual meeting of North Carolina city and county recreation directors. The general subject under discussion was the need for new legislation that would benefit professional recreators in developing recreation programs and facilities. Even though my comments then — and here — are directed primarily to the problems of planning recreation facilities, I think there is a moral in the situation that applies to city planners as well.

I made the point that perhaps we might do well to forget for the moment the need for new laws and new powers, and to concentrate on doing a better job — whether as recreation planners, city planners, or something else — with the legal powers that have already been bestowed upon us. I may misread the signs, but I believe I have detected a tendency on the part of many professionals in government to face up to a new problem by saying, "There ought to be a law . . ." Increasingly, I feel a need to respond by saying that if you are adept and energetic, and if you really have something to sell, there is more often than not a way to accomplish your objectives under the law as it exists.

For example, looking at Article 12 of Chapter 160 of the General Statutes, which is our recreation enabling act, one finds enumerated there all of the basic governmental powers: to tax, to spend money, and to exercise the power of eminent domain. Implicit (not explicit) there also is what some writers have referred to as the fourth basic governmental power, which is the power to plan — to plan wisely and well, to provide recreation facilities and services where they are needed, at the time they are needed, and of a size or capacity (not too big or too small) to meet the expected demand. The simple truth, however, is that many professionals in government do *not* always plan wisely or well. In many cases, the professionals involved (from whom one might reasonably expect some leadership in planning) make little or no attempt to coordinate their individual plans with those of other government agencies, or to integrate their plans with over-all community plans. The net effect of such disparate planning by independent groups or agencies may be disastrous for everyone concerned. As an example, let me recite the case of City X.

City X (a not altogether hypothetical city) operates a limited recreation program with a 7¢ tax levy approved by the voters several years ago. However, it has no recreation facilities or buildings to speak of. Partly as a matter of civic pride, and partly in recognition of the very real need for some additional facilities, a leading civic organization in City X has thumped the tub and taken the lead in promoting the construction of a substantial recreation facility for the city. This will include, among other things, a football stadium, an olympic swimming pool, and a community building. The recreation complex is to be built on the south side of a large tract adjacent to a new high school scheduled to open next fall. The idea has been enthusiastically endorsed by many civic leaders and groups and by governing board members in the area, and petitions circulated by the civic organization now bear the requisite number of signatures. Most of the proceeds from the $400,000 bond issue will be spent for the recreation complex described above. And yet, one can predict that when the matter is put to a vote, the bond issue will be defeated. Why? What are the problems?

First, it would appear that a basic planning principle, namely, that public facilities which serve the entire community should be located as near as possible to the population center of the community, has been violated. The recreation complex is, in fact, nowhere near the center of the population that will use it. It lies in an entirely rural area some distance away from the built-up section of the city, on a land-locked site which is approachable only by way of inadequate and dangerous highways. To residents on the far side of town who will have to drive 15-25 minutes to reach the site, it seems ridiculously far away. Individual opposition to the bond issue is already strong among these residents, and it is only a step or two away from being organized opposition.

It can also be questioned whether or not other planning principles were also overlooked. Among these would be the traditional requirements that major facilities be located where there is good highway access to the site itself, and where adequate utilities to serve present and future development are available or easily extended.

Given the failure to apply these basic planning yard-sticks to the case at hand, it is not unreasonable to anticipate that a number of administrative problems may arise. For instance, it may well be that the recreation project will suffer from secondary effects in the bond election from citizens who had no equivalent opportunity at the polls to express their disapproval of the location of the nearby school. A number of voters will take out their frustration over the school location on the recreation project. (This obviously poses a dilemma for recreation officials who have been berated on every side for years for not taking advantage of opportunities to develop joint school-recreation facilities.)

What all of this points up is the ultimate danger of uncoordinated recreation programming and planning, and the failure of City X to maintain strong and continuing liaison among the various agencies, public and private, which serve it. In oth-

er words, City X is a good example of what can happen when everyone runs off in his own sweet direction.

At the heart of the problem lies the fact that City X mounts a planning program that is something less than truly comprehensive. Its official city plan, prepared by the planning board, pays only passing attention to recreation needs. Nor is the city planning program very well coordinated with either the school or recreation programs, which are the job of "other" agencies. This is demonstrated in part by the fact that the local school board was acquiring land for its new high school at about the same time the planning board published its latest official plan proposing the location of the new high school in another corner of town, some four miles away. Nor has there been much continuing liaison between the planning board and the recreation commission, either at the staff level or at the board level. There was some discussion several years ago about placing members of each board *ex officio* on the other, but the appointments were never made. Thus, recreation planning in City X has tended to proceed on a "project" basis, rather than on the basis of overall community needs.

It seems apparent from this example, if we have not already learned it from similar situations elsewhere, that satisfactory school and recreation plans have got to be coordinated with overall city plans lest undesirable consequences appear. In City X, again pursuing the example, one might reasonably anticipate a number of unhappy results from the kind of segmented planning carried on there. For one thing, the expected progression of development, on which plans for other public facilities have been based, will likely be thrown out of kilter because of the strong "pulling power" of the combined high school-recreation complex. Public facilities developed for other areas may turn out to be underused, with hidden but nonetheless real cost to the public. The State will have to spend money for improved roads in and out of the area, perhaps at the expense or delay of other needed projects. The city will be put to major capital expenditures for new sewer outfalls to serve not only the project but also the secondary development that will inevitably be attracted to the area. As a result, public improvements to other sections of the city may be delayed. In addition, citizens will encounter increased public and private costs for transportation to this off-center location, and many residents on the far side of the city will be inconvenienced or effectively denied much practical use of the facilities.

I should make it clear that there is little question about the need for additional recreation facilities in City X. Its program is limited, its facilities virtually non-existent, and the demands for an expanded program are real and pressing. My reservations in this case are directed primarily to the random and uncoordinated procedures employed in the planning of these facilities. And perhaps it should also be made clear that the "fault" in City X is not entirely with the promoters of the recreation project or the recreation commission, but lies with equal weight on the shoulders of the city planning staff and commission for failing to mount the kind of comprehensive program that will automatically tend to insure that all public and private facilities mesh together when they are built.

I began this column by saying I don't think we need new enabling laws for recreation, but maybe we do need another kind of new law. Maybe "there ought to be a law" nailing down that fourth great power, one that would require cities and counties to plan *all* of their public facilities (including school and recreation facilities) in a comprehensive and coordinated way before *any* money is spent for capital improvements. Such a law might go on to require that such facilities could be constructed only in accordance with an official plan prepared by the city or county planning board and adopted by the city council or county commissioners.

A wild proposal? Perhaps. But I begin to wonder whether we can rely entirely on the professional people in these various fields to provide a less random, disconnected, and unsatisfactory approach. □

Smith and the Sudden Service Drive-In

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edies when he does not learn of the transfer or termination within the 60-day period or learns of it but fails to act within 60 days thereof. Clearly—with respect to taxes that are to become due for the current year—he has lost his right under G.S. 105-385 (a) (2) to levy on the property that was transferred or upon any other personal property of the seller or purchaser before the first Monday in October.

This, of course, in no way limits the remedies available to the collector for proceeding against the personal property of the seller for current taxes *after* they have become due. The status of the collector's remedies against the purchaser 60 days after the transfer or termination is not made entirely clear by the statute. Read literally, G.S. 105-385 (a) (2) seems to say that after the 60-day period has elapsed, the collector may still proceed against any of the purchaser's tangible personal property for collection of taxes that are already due. This interpretation is based upon the following language in G.S. 105-385 (a) (2): "The collector may levy on such property [meaning the business property transferred upon which the taxes had been levied] or any other personal property of the selling owner *or of the purchaser at any time for taxes on said stock of goods or fixtures already due at the time of the transfer or termination of business.* (Emphasis added). This interpretation would, however, put G.S. 105-385 (a) (2) in conflict with G.S. 105-385 (c) (6), its coordinate member. Paragraph (6) of subsection (c) states that a levy on transferred property in the hands of the purchaser must be made within 60 days of the transfer. This limitation was not made explicit in that part of G.S. 105-385 (a) (2) quoted above, and if the suggested interpretation of that subsection is not a strained one, then the conclusion is unavoidable

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. . . County and . . . Court

(Continued from page 3)

well to remember several basic principles:

● The caseload in a particular county is not going to change drastically simply because of the establishment of the district court. If one courtroom has been sufficient both for the superior court and the recorder's court up to the present, in all probability it will continue to be sufficient for the superior court and the district court.

● The district court will have a 12-man jury, in civil cases involving $5000 or less. If it is necessary to schedule sessions of civil district court at the same time as sessions of the superior court, *each* courtroom must have facilities for a jury.

● While misdemeanor and domestic relations sessions of district court will not require a jury, if new construction or extensive remodeling is required it would be false economy not to provide jury facilities. Flexibility in scheduling trials and provision for future growth will more than make up for the added cost.

● No courtroom is really adequate unless it has convenient side rooms for jury deliberations, for the judge to conduct in-chambers matters, and for attorneys to confer with clients and witnesses. Since the district court prosecutor will be a full-time official, an office should also be provided for him. A room for the courtroom clerk, and reporter, and for jailed defendants awaiting trail is also desirable. If two or more courtrooms are constructed on the same floor, some of the side rooms might serve both courts.

● Many courtrooms now in service throughout the State were designed to double as public meeting halls. There is no judicial requirement for a courtroom seating several hundred spectators. The maximum demand for courtroom seating will never exceed the requirements of a special venire.

● In most counties, the clerk of superior court, as clerk of all trial courts, including the former domestic relations and juvenile courts, will have a need for more space. The amount of the increase will vary with a number of factors, from county to county, and cannot be accurately predicted by a general rule.

● The county is responsible for providing space for magistrates also. This may not be feasible for the part-time magistrate assigned to a rural community for occasional issuance of warrants or acceptance of waivers of trial and guilty pleas to traffic offenses, but for those magistrates assigned full-time to the trial of small claims or for round-the-clock warrant issuance in urban areas, an office will be mandatory. While an otherwise unoccupied courtroom can be used, especially for small claims matters, a courtroom is not necessary. For small claims magistrates, a hearing room convenient to the clerk's office, and large enough for the litigants and counsel, will be adequate. For the warrant-issuing magistrate assigned to serve the sheriff's department or the city police, a room convenient to, but separate from, these activities, is all that is required. Separation serves to emphasize that warrant-issuance is a *judicial* function, and not simply an adjunct of law-enforcement.

● The need for judicial facilities is increasing faster, proportionately, than the population. Counties with rising populations will find that courtroom facilities barely adequate for today will be inadequate tomorrow.

● No building or remodeling plan is sound that emphasizes quantity at the expense of quality. Soundproofing, central heating, air-conditioning, and efficient internal arrangements are elements of adequacy just as much as numbers of courtrooms.

The Role of the Municipality

In the great majority of cities and towns which now have a recorder's court, the municipality's role in judicial operations will be terminated. In some counties, however, there will be cities other than the county seat designated by the legislature (Sec. 7A-130) as authorized seats of district court. Hickory (Catawba county), Canton (Haywood county), and certain towns in Robeson county are examples of this in the counties adopting the district court system in December of 1966. In each of these cities, provided the chief district judge and the Administrative Officer of the Courts concur in a finding that the facilities offered by the city are adequate, regular sessions of the district court may be held, and the facilities fees thus collected will be remitted to the city rather than to the county. County commissioners in these counties must bear in mind that both the caseload and the facilities fees must be shared with the city or cities concerned. In the cities concerned the planning and financing impact will be substantially the same as described herein for the counties. □

Smith . . . Drive-In

(Continued from page 20)

that (a)(2) and (c)(6) are in conflict. Although this conflict is difficult, if not impossible, to resolve from the text of the statute, resolution can be accomplished by examining the legislative history of both subsections.

In 1957 subsection (a) was rewritten and paragraph (6) of subsection (c) was added to give the collector an additional remedy for collection of taxes on a wholesale or retail merchant's fixtures or stock of goods when that property is transferred to another person. It seems apparent that since both subsections attained their final form in 1957 and since both are addressed to the same problem, they were intended to be coordinate parts of G.S. 105-385. That the 60-day limitation was explicitly stated in (c)(6) but not in (a)(2) indicates either that (c)(6) was intended to limit (a)(2) or that the time limitation was inadvertently omitted from (a)(2).

The remedy is extraordinary. Nowhere else in the Machinery Act is the collector authorized to levy on the property of a third person for collection of taxes on property that he has purchased, regardless of whether he was acting as a bona fide purchaser. It is almost certainly because of the extraordinary nature of the remedy that the 60-day limitation was put upon its use, and many who supported the addition of this remedy to G.S. 105-385 would probably be greatly concerned to learn that it could be

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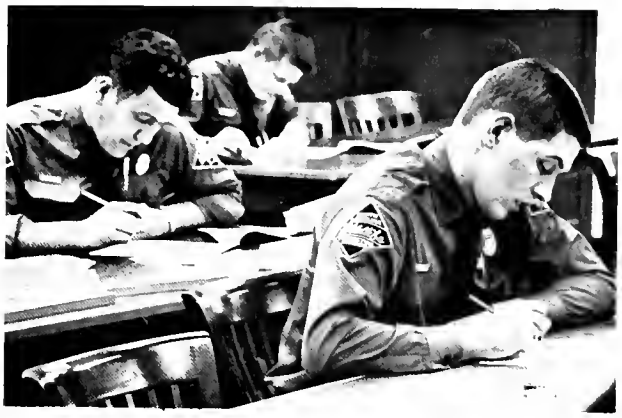
A refresher seminar on Institutes on Democracy vs. Totalitarianism *met at the Institute of Government. The North Carolina Educational Council on National Purposes sponsored the session, highlighted by a dinner meeting with Professor Donald Weatherbee of the University of South Carolina's Department of International Studies as speaker.*

INSTITUTE SCHOOLS, MEETINGS, CONFERENCES

Selected members of Community Action programs from eight states attended a workshop at the Institute. Topics included establishment of neighborhood centers, development and operation of good programs from these centers, and methods of involving residents of disadvantaged areas in worthwhile program participation.

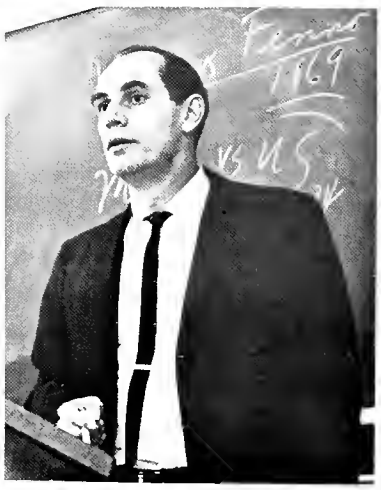
The 1966 County Attorneys Conference at the Institute concluded with county participation in federal programs, such as the war on poverty. Principal speaker was Harold Bailin (left), Area Coordinator, North Carolina Regional Office of Community Action Programs. Jake Wicker, right, was also a participant.

Sgt. Earl Green lectures during a North Carolina Highway Patrol In-Service Training School at the Institute. These refresher sessions will reach all members of the Patrol during the year.



Intense concentration is the order of the day during a Wildlife School at the Institute. In the foreground is William L. Lawrence, Protection Division; at left, Robert Tipton, Game Division; and center, Donald E. Souther, Game Division.

Three North Carolina police officers lectured during a recent session of the Institute's Police Administration Course. Above is George Stephens, Chief of Police, Mecklenburg County; above right, Sgt. James Hilliard, Training Officer, Greensboro Police Department; and right, Major J. C. Goodman, Charlotte Police Department.



Dr. David G. Davies (left), Professor of Economics at Duke University, discusses the incidence of taxes at a February session of the Institute's Seminar for City and County Manager.

Smith . . . Drive-In

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used against a purchaser more than 60 days after the transfer of the property.

The lesson of history, then, would seem to indicate that this conflict or lack of coordination should be resolved in favor of (c)(6), thereby imposing a 60-day limitation on any levy upon property of the purchaser, whether for collection of taxes already due or those to become due. This leaves as the collector's only remaining remedy against the purchaser a suit to hold him personally liable for the tax claim under the provisions of G.S. 105-385(g). But even the probable success of this remedy is lessened by the passage of more than 60 days, for if the purchaser is a non-resident, the passage of time increases the likelihood that he has returned to his home state and could not be validly served with process.

The collector still has all of the remedies against the seller that he would have had if he had acted within the 60-day period, the right to levy before the first Monday in October for taxes to become due excepted, and the principles of law applicable to disregarding the corporate entity are still relevant. If the separate corporate personality of the Sudden Service Drive-In can be disregarded and Mr. Smith's personal property proceeded against when the collector acts within the 60-day period, the passage of a longer period of time will not affect this right against Mr. Smith.

The importance of the collector's keeping informed of current business transfers and terminations by wholesale and retail merchants so that he can take action within 60 days of such transfers and terminations cannot be over-emphasized. If the collector knows of the transfer or termination and acts within 60 days thereof, he has a wide range of collection remedies from which to choose, one of which is almost certain to lead to satisfaction of the tax claim. If he does not learn of the transfer or termination until more than 60 days thereafter, his choice of remedies is restricted and the chances are increased that the tax claim will never be satisfied. □

Legislative Representation in North Carolina

(Continued from page 13)

cal separateness of counties. It was often contended with respect to House reapportionment that the interests of people who do not have a resident of their own county serving in the House will go entirely unrepresented. Yet it is not unreasonable to hope that future Representatives, no less than the Senators of the past, acting from considerations of political interest as well as duty, will try to represent effectively the people of their entire district, especially on matters of statewide importance. The new necessities doubtless will shape new attitudes and traditions with respect to the role of the Representative, but the transition may not be rapid.

The outcome, especially with respect to the House of Representatives, suggests that the Republican Party was wise not to have initiated the court action which led to reapportionment. The Western counties and some of the smaller Piedmont counties from which the Republican Party has traditionally drawn most of its strength in the House lost heavily in the process—not so much because of the art exercised by the Democratic majority in map-drawing as because those counties lacked the population to keep their separate Representatives. Compensating gains in some of the more populous areas may in time offset these losses, but that will not be an automatic consequence of reapportionment. Perhaps the dilemma of the Republican Party was illustrated by the fact that, despite earlier promises to do so, it offered no plan for Senate or House reapportionment, and suffered considerable embarrassment in the process of developing its congressional plan.

It was generally recognized that the population shifts which the 1970 census will reveal will call for further revision of both legislative and congressional districting plans, especially the latter, in 1971. Little consideration was given to population trends in devising the 1966 plans, however. The General Assembly was bound by the 1960 census. It had no reliable projections of population, and to have departed significantly from equality of population under the 1960 census figures in order to anticipate the equalizing effects of the 1970 figures would have invited at best much added disputation in the legislature and at worst disapproval by the court of the resulting plans. It is clear, however, that the shifts in voting strength in the House and Senate should make the 1971 revisions much easier than were those of 1966.

The judicial command to revise the congressional districts of 1967 will mean that within the space of five years, the congressional districting plan will undergo three changes. It is probable that the 1967 revision of the 1966 plan will have to be fairly radical in form if it is to meet the District Court's requirements of compactness and contiguity, in addition to population equality. That plan will still be based on the 1960 census, however, and the population changes revealed by the 1970 census probably will insure that still further changes, also extensive in nature, must be made by the General Assembly of 1971. Thus within a twelve-year span (1960-72) congressional elections in North Carolina will have been held under five different districting plans.

Prospect

After November 8, 1966, it will be impossible to assemble a majority of the membership of either the Senate or House of Representatives which does not represent at least 47.5 per cent of the people of the State. This means that, especially in the House, the people of the more populous areas throughout the State have the potential to speak with a newly-strengthened voice, one capable of determining the course of legislation. Whether they do so will depend largely on the kinds of people the voters of those areas elect to the House and the skill and experience they gain there. It will require sending able men to serve for extended periods, not just a session or two. Awareness has already been expressed editorially and otherwise that the larger counties have an increased responsibility in this respect.

Many of the small counties will no longer be represented regularly or even frequently in either house by one of their own residents, and most of the Representatives and Senators must speak for more than one county. This fact may lead to a reduction in the quantity of local legislation processed by the General Assembly and a corresponding trend toward reliance on general laws vesting more authority in boards of county commissioners and city councils.

In many states, population-based legislative apportionment has been sought and acclaimed as the prelude to broad changes in legislative policy, as voting power shifts from rural to urban and suburban spokesmen. No early or radical change of this sort is to be expected in North Carolina. Here, in contrast to many states, rural legislators have rarely used their power to shape state policies to the special benefit of their areas and the injury of the more populous areas. There are doubtless a few matters—in-town school bus transportation and daylight saving time come to mind—on which reapportionment may have a telling influence. There should be somewhat more widespread awareness among members of the problems besetting growing urban areas, although it should be said that the cities have often found understanding and support among small-county legislators. But on such issues as the distribution of public school and highway funds by the State—grounds of major rural-urban conflict in many states—no fundamental policy change is likely. As it has for over three decades, North Carolina will follow the policy of taking the money where it is and spending it where the needs are found.

The speculation has been offered that with the loss of voting strength by small-county spokesmen, they might look with greater favor on giving the Governor the veto power—heretofore scarcely a mentionable subject in legislative circles. Having become a legislative minority, the argument goes, they may see the veto as a possible protection, rather than as a threat to legislative prerogatives no longer so fully theirs. Perhaps so, but before the votes are cast on the matter, careful thought will be given to the balancing factor that the areas which will hereafter elect legislative majorities can control the election of Governors as well.

The most radical development which might flow from legislative reapportionment—one often discussed in newspaper editorials of late, and suggested on the very floor of the House of Representatives in January with a bold-

Education and the Law

By Allan W. Markham

Do you know that throughout the school laws of North Carolina the general duties and responsibilities of public school teachers are set out in many statutes? Teachers, for example, are expected "to maintain good order and discipline," "to encourage temperance, morality, industry, and neatness," and "to instruct the children in the proper care of public property." All of this is, of course, in addition to the normal teaching and school administrative duties which the law imposes upon the teacher.

One of the most important responsibilities which the teacher has, as a professional, is to keep himself current in the techniques of teaching generally and particularly in the subject area of his teaching specialty, whether it be primary education or advanced physics. The General Assembly, as well as the State's education leaders, recognizes this and has made specific provisions in the statutory law for the professional growth of teachers. Section 115-45 of the North Carolina General Statutes states:

> County and city boards of education are authorized to provide for the professional growth of teachers while in service and to pass rules and regulations requiring teachers to cooperate with their superintendent for the improvement of instruction in the classroom, and for promoting community improvement.

In addition, G.S. 115-57 imposes upon each superintendent the duty to "confer, work, and plan with all school personnel to achieve the best methods of instruction," and to "hold each year such teachers' meetings and study groups as in his judgment will improve the efficiency of the instruction in the schools . . ." In specifying certain of the responsibilities of the public school principals, G. S. 115-150 provides that they "shall give suggestions to teachers for the improvement of instruction" and that teachers shall "cooperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons."

The above three sections refer to authorities and responsibilities of school boards, superintendents and principals respectively; G. S. 115-146 is directed specifically to the teachers:

> It shall be the duty of all teachers . . . to enter actively into the plans of the superintendent for the professional growth of the teachers . . .

The foregoing excerpts from four sections of the state school laws make it quite apparent that the teacher does not discharge his legal or professional obligations solely by teaching during the school day and tending to routine school matters. Nor does the teacher's education end upon the receipt of his degree and certificate.

The provisions quoted constitute local authority regarding the continuing professional qualifications of teachers and are supplementary to the responsibility of the State Board of Education, exercised primarily through its certification and certificate renewal authority.

Failure of a teacher to maintain maximum current proficiency in the appropriate area or areas is not only unprofessional but can be the basis for dismissal under the terms of the teaching contract. □

The Training School

(Continued from page 17)

The training school is also obligated to let the various agencies know of its services and limitations, and to encourage visitations. Through this type of relationship, the agencies will be aware of the resources available for their use as well as the type cases it is ill-equipped to work with.

Aftercare

What happens to a child after he leaves the training school is probably the most important aspect in the entire program for dealing with children who get in trouble. When a child is released from the institution, how he is released, how he is received back into the community, and what he does there, how he is helped through this whole critical period and how it is decided when he has broken conditioned release, or supervision can be terminated, are all points demanding wise and serious consideration.

This period is a part of the treat-

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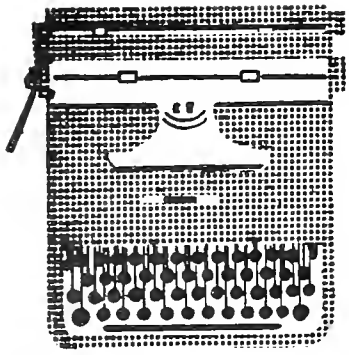
ness which would have been unthinkable only a short while ago—is the reduction in the number of the State's counties. The significance of reapportionment here is that the small counties have now lost the main prop which sustained time in Raleigh—their votes in the House of Representatives. The local factors favoring the preservation of every county may be as strong as ever, but no longer will there be the same legislative concern to keep every one of them in being, lest the passing of a county mean the loss of one more vote by the small-county group in the House. The General Assembly puts nearly half of the State budget into appropriations largely administered by the counties, units which it can create or abolish at will. Someday it may conclude that, sentiment and tradition aside, it is unsound policy to continue to maintain a dozen counties with less than 10,000 population or 34 with less than 20,000—nearly all of them declining in population. The merging of counties would not be a simple process nor would it solve the problems which are inherent where population is spread thinly over large, often poor, and sometimes uninviting areas. Nor is it a process with significant precedent in the United States: the 3,000-plus counties of the Nation have declined at a rate of less than one a year in recent decades, and some of those which have disappeared were little more than legal fictions. But it is an idea which is likely to be heard with increasing frequency in the years ahead.

Conclusion

And so the tide of reapportionment has swept over North Carolina, one of the last dozen states to be reached. The General Assembly has spoken. The District Court has answered. The echoes will rebound for many years to come. □



● NOTES FROM . . .

CITIES AND COUNTIES

ABC

Wallace voters okayed ABC stores 291-217 in a January vote, making Wallace the third *Duplin* County community to legalize liquor sales. *Kenansville* and *Warsaw* have ABC stores although they were rejected in a county-wide election several months ago.

* * *

For the second time in five years *Statesville* voters have turned down the ABC plan by a slim margin. The plan was defeated by 133 votes in a total vote of 2,476 to 2,343.

* * *

Achievements

Wilmington is being considered for Look magazine's annual "All-America City" award. The coastal city is one of 24 finalists in the competition cosponsored by the National League of Municipalities.

* * *

Bessemer City, Rocky Mount and *New Bern* were among the cities receiving Distinguished Achievement Awards in a national cleanest town contest sponsored by the National Clean-Up, Paint-Up, Fix-Up Bureau. Factors considered by judges included community beautification, slum riddance, health improvement and safety standards, teaching of juvenile decency and fire prevention.

* * *

Airports

Wayne County commissioners cleared the way for construction of a terminal building to serve commercial air flights into and out of *Goldsboro* by releasing $35,000 to the Airport Authority. Another $15,000 will go toward a new general aviation airport.

* * *

Bertie County has paid its $25,000 share for a tri-county airport, joining *Hertford* in the paid-up department and leaving *Northampton* County the only member of the trio in arrears.

Blue Laws

Wilson's city commissioners have passed a blue law ordinance vigorously supported by merchants and unanimously approved by the board. The law bans specified items and is an amendment to a Sunday closing law on the books since 1954.

* * *

Civil Defense

Randolph County commissioners have taken the first step toward organization of a civil defense unit by appointing 17 staff chiefs. Steps two and three will be appointment of a CD director and drafting of a survival plan.

* * *

Hendersonville commissioners have okayed a thousand dollar Civil Defense budget for the coming fiscal year along with an identical budget for the Hendersonville rescue squad.

* * *

Education

Plans to consolidate *Harnett* County's 13 high schools into three big area schools have been outlined. The long-range program, estimated to require issuance of about $6 million in county bonds, would require ten to 15 years for completion. In addition to the high schools, two junior high schools would be located in each of the three areas, if and when needed.

* * *

Ground has been broken for two community colleges recently. Ceremonies were held at *Wentworth* for *Rockingham* Community College and in *Dobson* for *Surry* Community College.

* * *

Trustees of Wilkes Community College have approved preliminary plans for the college buildings, to be erected in west *Wilkesboro.*

* * *

Western Piedmont Community College at *Morganton* has announced plans for its first round of college parallel courses to be held at night beginning this month.

* * *

Fire Protection

Burlington's fire department is undertaking a comprehensive, long-range program designed to prevent fire damage in industrial plants and to expedite fighting fires if they do occur. Department personnel conduct surveys of the plants and information gained—such as floor plans, location of fire hydrants and extinguishers—is discussed and studied during training classes attended by all firemen. Plans are being made to extend the survey into *Alamance* County.

* * *

Health

Gaston County Commissioners have agreed to take over Gaston Memorial Hospital and build a new $10.25 million facility. A referendum will be called to secure the bond money.

* * *

Greenville councilmen have placed an air pollution ordinance on the books, aimed at curbing harmful smokes and gases and related materials.

* * *

Wilkes County voters have approved a $400,000 bond issue for hospital expansion by a margin of more than two to one. A 40-bed unit will be added to the present 100-bed Wilkes General Hospital.

* * *

Siler City's town board has voted unanimously to include a flouridation project in the 1966-67 budget. There seems to be no opposition to the water additive among Siler City citizens.

* * *

The long-planned *Stanly* County Mental Health Clinic has begun operations and is offering two services: conferences with groups now working with problems related to mental health, and follow-up psychiatric assistance for residents who have been

discharged from state hospitals and need "after-care."

* * *

Lenoir Memorial Hospital's building committee has been authorized by county commissioners to proceed with selection of an architect and preliminary plans for a proposed 300-bed county hospital.

* * *

A series of ten sessions on mental health has been conducted in *Rutherford* County as a joint project of the mental health division of the State Health Department and the county school system.

* * *

Wake County commissioners have agreed to support a birth control clinic at the county health department on a one-year trial basis. The clinic would operate for the benefit of the indigent.

* * *

Housing

Contracts have been awarded by the *Qualla* Housing Authority for construction of 36 units of low-rent housing on the Cherokee Indian Reservation.

* * *

Law Enforcement

A law enforcement academy, to be held at the *Catawba* Valley Technical Institute, is being considered as a cooperative program by the State Bureau of Investigation and the Department of Community Colleges. The *Hickory* area academy would be similar to the Coastal Plain Law Enforcement Academy in *Greenville* and the Piedmont Law Enforcement Academy at *Davidson* County Community College. Plans call for operating the school on a yearly basis with four-week training sessions.

* * *

Charlotte police have added a fearful new weapon to their arsenal. It's a mobile whammy that doesn't look like a whammy, mounted on a plain car. The device looks like an oversized spotlight mounted on the driver's side of the car. Inside the car is the control box which includes a speedometer to give the operator of the unit the speed of the car he is checking. The radar can read the speed of a car approaching, coming from behind or crossing in front of it, but cannot be used with the police car is in motion. The unit requires a single operator, thus reducing the number of men required to operate a speed watch from a minimum of two or three to one.

* * *

Durham is sporting a new look in police cars. The vehicles are equipped with a classic war-type siren which goes "Wooop-Wooop-Wooop" instead of the more conventional "WeeeeEEEEEEeee." Blue lights—two of them—will blink on each side of the car top instead of the old standard single red light.

* * *

Carolina Beach policemen have launched a special effort to curb property damage by air rifles. At least two ordinances control the discharge of fire arms or air rifles in the town limits and these will be strictly enforced.

Numbers Game

Come April Fool's Day, most Concord residents will find themselves living at new addresses.

But not a citizen will necessarily have made a move. And there will have been no tomfoolery involved in the citywide upset.

Going into effect April 1 will be a new name-and-number system based on a logical grid system and requiring a change in the "100" number every 1200 feet. Sixty-eight of the city's more than 200 streets will have new names.

The system will extend one mile into the perimeter area outside the city limits, to take care of future annexation.

Davie County's new public library swung open its doors late in February. The contemporary building is located in *Mocksville*.

* * *

An afternoon and Saturday schedule is being maintained by the new *Fremont* branch of the *Wayne* County public library.

* * *

The *Whiteville* Public Library has received a $33,210 Federal grant for construction of a new building. The funds will augment $23,000 in donations from individuals and equal donations totaling $25,000 from the Levitt and Leff Foundations of New York City.

Miscellany

A cardinal, a spray of dogwood, six stars representing the mayor and the councilmen, and the motto "opportunity" are combined in the new seal designed for the town of *Wadesboro*.

* * *

Municipal Buildings

Crowded conditions and the need for another courtroom at the *Wilson* County Courthouse were cited in a report made by a committee of the Wilson County Bar Association. The Bar is considering present and future needs along with methods for financing improvements.

* * *

Henderson County officials have unveiled their newly rennovated courthouse. The 61-year-old facility has undergone a complete overhaul including a lowered ceiling, recessed lighting, and theatre-type seats in the courtroom itself.

* * *

Construction is progressing on a new municipal building and separate fire station in *Mount Olive*. The municipal building will house city offices, a jail, and public comfort stations.

* * *

Parking

Work has begun on a two deck 491-car parking garage, expected to revitalize *Wilmington's* downtown business district. The facility will help solve traffic problems, as well as the parking dilemma.

* * *

Planning and Zoning

A preliminary plan for future development of *Roxboro's* central business district, based on a Conservation and Development Department study, has been outlined. The plan calls for a block-long pedestrian mall and the removal of some existing structures.

* * *

Mobile homes and mobile home parks will be permitted in *Newton*, but only when they meet the stringent requirements set down after five months of study and numerous public hearings.

* * *

Gastonia has adopted changes in its housing ordinance to require homeowners to keep their property clean. At the same time the city started the legal machinery to create a Housing Authority.

A recommendation to merge planning operations of *Wilmington* and *New Hanover* County has been unanimously approved by the planning boards of both governmental bodies. The resulting group will be known as the Joint City-County Committee.

* * *

Goldsboro's planning commission has okayed the city's adoption of the Southern Standard Minimum Housing Code. The proposed code would tighten requirements in the city as far as proposed and existing housing structures are concerned.

* * *

Raleigh councilmen have adopted an ordinance requiring developers to install sidewalks in future residential subdivisions. Effective May 1, the ordinance will give the city a stronger hand in preventing traffic hazards to pedestrains, especially school children.

* * *

Rezoning in east *Gastonia* will permit drug stores and medical clinics to be erected, along with doctor's offices, in an area near the site of the proposed new hospital.

* * *

Recreation

Wilmington's city council agreed to split a gift of $25,000 from the Sarah Graham Kenan Foundation between the city parks and recreation department and the public library. Tennis court construction will claim $21,338, leaving $3,662 for library use.

* * *

Streets and Highways

A long-awaited transportation link between *Fort Fisher* in *New Hanover* County and *Southport* in *Brunswick* has been realized with the first run of the Southport-Fort Fisher Ferry which made its maiden voyage February 8.

* * *

Urban Renewal

A predominantly substandard area in southwest *Goldsboro* has been selected as the study site for the city's first urban renewal project.

* * *

Utilities

Halifax County Commissioners have adopted a proposed formula for the extension of water and sewer facilities to serve new or expanded industry wishing to locate out of the corporate limits of any Halifax municipality.

Durham councilmen have given final approval to the purchase of the Hope Valley sewerage system for a cost of $1 and the assumption of responsibility for all maintenance and repairs to the system and its parts.

* * *

Needs have been determined and the site selected for a new sewage lagoon to serve *Pikeville*. A bond issue will be needed to finance the construction.

* * *

Following a preliminary study of needs, *Kenly* has made application for a loan grant to expand the town's water and sewer system.

* * *

Land for a sewage treatment plant has been obtained for the city of *Durham* in a swap with Duke Power Company. The site will be for one of three treatment plans needed for newly annexed areas.

* * *

Bertie commissioners have taken initial steps toward expansion of county water and sewer systems in voting to take advantage of a new program of the Farmers Home Administration. The 100 per cent grant in funds, estimated at $35,000, would cover preparation of a comprehensive area plan for water and sewer systems.

* * *

Windsor has filed a preliminary application for federal funds to aid in construction of a sewerage disposal system which would mean the saving of one local industry and the possible addition of others.

* * *

Newton's first water rate hike in 28 years went into effect March 1. The town board boosted the $1 minimum to $1.25 for the first 3,000 gallons. Sewer rates were also increased. Water furnished outside the city has gone up to $2.18 for the 3,000 gallon minimum.

* * *

A $280,000 grant from the Farmers Home Administration means that *Denton* will go to the Yadkin River as a source for its new water system. Water bonds totaling $580,000 had been approved in August with only eight of 262 voters saying "no" to the proposal. The vote represented a turn out of 81.6 per cent of the registered voters.

* * *

Funds for construction of a sewage disposal plant in *Enfield* will be provided in part by a grant of $117,600 from the State Department of Water Resources.

* * *

Granite Falls voters have overwhelmingly approved four bond issues totaling $280,000. More than 80 per cent of the voters favored a $180,000 issue for reconstruction of the town sewage treatment facilities and the provision of additional sewage lines. Slightly more popular was the $20,000 issue to expand and improve the town's water system. Also approved were a $65,000 issue to construct a new fire station and a $15,000 issue for reconstruction and enlargement of the police station. Of the town's 1,049 registered voters, only 257 went to the polls.

* * *

Onslow County commissioners have given the green light to a proposed $8 million project that would eliminate crucial water and sewage problems affecting more than 14,000 residents in three areas of the county. If the project—which involves establishment of three sanitary districts—becomes reality, the Federal government would foot half the cost.

* * *

Plans for a combined water and sewer project are being drawn in *Elkin*. The results could be construction of a new water filtration plant, up dating other aspects of the water system, and expanding the present sewer system to reach every house within the town's corporate limits.

Court Prosecutor

(Continued from page 18)

quoted phrase refers to appeals from district court misdemeanor convictions, but it might also cover felony cases in which the prosecutor conducted a preliminary examination.

To compensate for the loss of income occasioned by the giving up of a private law practice, the 1965 Act provides an annual salary of $11,000 for the prosecutor, and $9,000 for a full-time assistant prosecutor. Travel expenses, at the same rate as State employees generally, will also be paid, for travel on official business outside the county of residence. If these salaries prove to be inadequate to attract qualified practitioners, they can of course be raised readily by the legislature.

Full-time assistant prosecutors are

(Continued inside back cover)

Book Reviews

THE FIRST 50 YEARS of the COUNCIL-MANAGER PLAN OF MUNICIPAL GOVERNMENT. By Richard S. Childs, National Municipal League, New York, 1965, 117 pp. Paperback, $1.

COUNCIL-MANAGER GOVERNMENT: THE POLITICAL THOUGHT OF ITS FOUNDER, RICHARD S. CHILDS. By John Porter East, University of North Carolina Press, Chapel Hill, 1965, 192 pp., $4.50.

Seldom is a man's autobiography and biography published in the same year, and even more infrequently does a man review his own biography. But Richard S. Childs is not an ordinary man.

Father or inventor of the council-manager form of municipal government in 1910, Richard S. Childs has devoted many of the intervening 56 years and generously of his personal fortune to promoting good municipal government. A dreamer, reformer, advocate, and partisan non-partisan, in addition to a businessman with a flair for promotion and advertising, Childs saw a miracle before there was one; he proclaimed a trend after the first adoption; and he is now looking forward to his 100th birthday, which he calculates will coincide with the universal adoption of the council-manager plan.

The First 50 Years of the Council-Manager Plan is not a true autobiography. It is a promotional booklet containing Childs' views on local government. It is brief, easy to read, and recommended for mayors, councilmen, county commissioners, and citizens wanting to know something about the manager plan and the other recommendations of Richard S. Childs. The latter includes (1) the short ballot, (2) non-partisan elections, (3) mayor elected by and from the council, (4) councilmen elected at large for overlapping terms, and (5) councils without standing committees. Councilmen desiring to prepare charter amendments should consult the more objective statements of the *Model City Charter* (Sixth Edition, 1964. National Municipal League. $2.50).

East has done a scholarly research job in recording and analyzing Childs' unchanging views. His major criticisms are (1) Childs views the council-manager plan as a "universal ideal" not a theory subject to change or adaptation; (2) Childs sees politics as static and dirty instead of a changing process, and (3) Childs ignores the need for research and testing to determine the ability of the council-manager plan to anticipate social problems and provide leadership in the solution of political and social problems.

Readers will find that East's book suffers from the same faults as most dissertations—some chapters are tedious, repetitive, and filled with the new vocabulary of the behavioral approach.

East's book will remind managers of the enjoyable debate between Childs and East's mentor, Dr. Gladys Kammerer of the University of Florida, at the ICMA convention in 1961. On that occasion Childs was declared the winner by acclamation although most of those present didn't agree with either Childs or Kammerer. The majority believed the facts regarding the "political" role of the manager to lie somewhere between the two positions. Through East's book, Kammerer has secured some measure of revenge.

The council-manager form of government will continue to increase in popularity and usefulness and continue to change (in spite of Childs' efforts to the contrary) even though East has found Childs guilty of practicing as a theoretician or philosopher without a license. But on second thought, Childs never claimed to be a philosopher. He prefers the banner of the Reformer.

North Carolina is especially indebted to Richard S. Childs for financing and promoting the early writing of Dr. Paul W. Wager of the University of North Carolina on the county manager form of government. North Carolina now has 18 of the 32 recognized county managers in the United States and 35 of the 36 North Carolina cities with populations of over 10,000 now have adopted the council-manager plan. Not all cities in the nation may have adopted the council-manager form of government by Richard S. Childs' 100th birthday, but if Roanoke Rapids should adopt the council-manager plan, perhaps a special North Carolina birthday party can be arranged!

Reprinted below is Childs' review of East's book about Childs which appeared in the National Civic Review. —D.H.

Mr. East, who is 50 years younger than the subject of this intellectual vivisection, wrote it as his doctoral dissertation last year at the University of Florida. The title was then "The Political Philosophy of Richard S. Childs. An Analysis and Critique," which more precisely defines its scope. Childs testifies that the young man has drained dry the river of print that the former has poured forth since 1909, including his two books, every identifiable contribution to the *National Municipal Review* (now *National Civic Review*) and long-forgotten articles elsewhere: the parallel pamphlet out-put of the National Municipal League: all the yellowing press releases of the Short Ballot Organization, 1909-20; and even the trivial correspondence with Woodrow Wilson preserved in the Library of Congress. The result is a piece of solid modern workmanship that would be a credit to any scholar.

Childs was, in 1922, a vice-president of the American Political Science Association and member of its Review Advisory Committee, but that was in the simple old days when the scholars were relatively few and tolerated what they now call activists. Childs was, and is, no scholar. There was no political science at Yale in his time (1900-04) and his early writings, the product of plausibility and imagination, were as naive and conjectural as those of the other reformers of that day. He was a young advertising man and quick with glib slogans: "If it doesn't 'democ,' it isn't democracy." "The long ballot is the politicians' ballot: the Short Ballot is the people's ballot." He was cheered on by scholars —Deming, Beard, Woodrow Wilson, Henry Jones Ford, A. Lawrence Lowell—but his objective was to catch the ear of the public in an era that was avid for reform.

Now comes young East, tutored in the vast and murky depths of what he calls the second era of political science, who conducts his vivisection in

words that drive Childs to the dictionary (heuristic, nomothetic) and with references to the writings and field work of 40 modern authorities whom Childs never heard of. He classifies the old cuss as a rationalist according to the Schubert schema (what's that?) notes his neglect of "causal theory" and convicts him, correctly, of a priori reasoning. He describes Childs' reasoning as "simplistic," probably meaning "simple," which is what persuasive advertisements ought to be. The lack of cautions, caveats and exceptions for special or future situations in the field (which would have encumbered the prime effort to get any attention at all) is interpreted as a "closed system," locked up against growth and adaptation and the lessons of the next 50 years of experience. So Childs' utterances, addressed to anybody who might listen among the officers of chambers of commerce, leagues of women voters and disgruntled taxpayers —amateurs all, are here found to be over-simplified and astray from the massive and sombre papers which the huge modern array of political science professors has been issuing to each other in their cloisters.

The critique does not challenge the success or soundness of the council-manager plan but merely finds Childs sometimes making use of evidence which falls short of proof and being, by modern standards, unscholarly in its sweeping colloquialisms. Childs' outdoor audiences will remain unaware of all this, but the confrontation was overdue and is now competently deployed with conscientious completeness. And with a scholarly fringe of appendices, footnotes, ibids and passims withal!

Childs has gotten cocksure in his old age and this friendly head-washing may do him a lot of good! R.S.C.

UNSAFE AT ANY SPEED by Ralph Nader. New York: Grossman Publishers, 1965. 365 pp., $5.95.

Unsafe at Any Speed is a challenging and controversial book on the subject of traffic safety. The author, an attorney at law, served as advisor to the Senate Subcommittee investigating automobile hazards. His thesis is that unsafe automobiles may cause more highway deaths and injuries than unsafe drivers. His eight chapters and two appendices cite specific car defects and failures of automobile manufacturers to take what he considers to be effective corrective action or, in some cases, to make known or concede their mistakes. He suggests that economy in the interest of higher profits has controlled automobile design more than human safety. He discusses beginnings and problems of federal gorvernment action and proposes a more uniform and comprehensive program which would assure increased safety in automobiles as well as drivers.

Nader writes: "Today the motor vehicle is the leading cause of death among people between the ages of five and 30 and the fourth leading cause of death in this country. Car accidents account for over one-third of the people hospitalized for injuries in the nation; they are the leading cause of injury to ears and eyes and cause over 25 per cent of partial and complete paralysis due to injury." Again: "Only the federal government can undertake the critical task of stimulating and guiding public and private initiatives for safety. A democratic government is far better equipped to resolve competing interests and determine whatever is required from the vast spectrum of available science and technology to achieve a safer highway transport environment than are firms whose all-absorbing aim is higher and higher profits. The public which bears the impact of the auto industry's safety policy must have a direct role in deciding that policy. The decision as to what an adequate standard of public responsibility in vehicle safety should be ought not to be left to the manufacturers, regardless of their performance. But the extraordinarily low quality of that performance certainly accentuates the urgent need for publicly defined and enforced standards of safety."

Much of the author's evidence apparently came from the Senate Subcommittee hearings in which he participated. A new, smaller publication, "Stop Murder by Motor," published by the American Trial Lawyers Association, uses similar information and recommends substantial safety design features in automobiles. That report, which also deals with driver and other factors in traffic safety, states: "If cars were built with only three basic changes, occupants could probably survive any crash up to 35 m.p.h." The three "basic changes" are identified as "shoulder harnesses in all cars, doors that will stay closed in a crash, and collapsible steering posts."

Recently President Johnson was reported to have called upon the motor industry to institute safety changes in motor vehicles within a limited period or to expect appropriate action by the federal government to achieve this end. It is not unlikely that, among other factors underlying this Presidential admonition, are the findings of the Senate Subcommittee, counsel Nader's book, and the recommendations of the Trial Lawyers Association. In view of the increasing efforts and emphasis at state and national level to do something about the tragic toll on our highways, *Unsafe at Any Speed* is bound to receive considerable attention not only in Washington and Detroit but throughout the nation.—E.R.O.

The Training School

(Continued from page 25)

ment process. All the help a child has received from the institution may be cancelled by the failure to provide for continued treatment after release. Returning to homes and communities from which they came, or coming to new homes, provide enough pitfalls to demand the most skillful help for the child in making this transition.

The term aftercare may or may not be the best terminology to express continued treatment. Other means of expressing it are used: probation, parole and post institutional care. The terminology has changed from time to time but the idea of providing supervision of children released from an institution is not new.

The need for a good aftercare program is generally recognized and in most instances adequate funds have been provided. Some states have satisfactory legislation outlining such programs, but have never appropriated the necessary funds or money. The lack of funds in this area is outstanding. It is apparently a phase of the entire program that is very difficult to sell to the proper authorities in order to secure the necessary support.

Local counties and communities provide for the aftercare services and have one outstanding advantage over an outside worker, and that revolves around the responsibilities of the community to the child. The child becomes delinquent on a local level, so

(Continued on page 32)

Attorney General's Rulings

Compiled by Allan Ashman

COUNTIES

Use of County Funds

31 January 1966
A.G. to R. J. Hester, Jr.

Question: May a county expend general fund revenues to assist a city in providing facilities to attract a proposed new industry?

Answer: No. There is no known statutory authority for a county to expend funds for such a purpose or to impose a tax levy for such a purpose in the next fiscal year. It is also highly doubtful that any enabling legislation would be constitutional. Probably, such expenditures would not be for a "public purpose" and would constitute the granting of special privileges and emoluments to a set of persons in violation of the Constitution.

COURTS

Clerks of Recorder's Court

11 January 1966
A. G. to L. W. Grimes

Question: If a person has been elected to a four year term as clerk of a county recorder's court, the term to expire in 1968, would that office continue to exist until the First Monday in December, 1968, or does the office cease to exist as of December, 1966, on the date the District Court organization becomes effective in that district?

Answer: The office of clerk of a county recorder's court would automatically terminate upon the establishment of the District Court in that particular district. Although under the constitutional amendment, Article IV, Section 21, judges of inferior courts, except mayors and justices of the peace, are continued for their term of office as judges of the district courts, no such provision was made for the clerks of the inferior courts.

DOUBLE OFFICE HOLDING

5 January 1966
A. G. to Ralph A. Vogenberger

Question: Can an individual serve as a member of an Economic Development Commission if he is already a member of a County Planning Board, a City Planning Board or a Supervisor of a Soil and Water Conservation District?

Answer: No. This office has previously ruled that a member of an Economic Development Commission and a Supervisor of a Soil and Water Conservation District are both public officers. An individual who holds both offices would be violating Article XIV, Section 7 of the North Carolina Constitution. A member of a County Planning and Zoning Commission under G. S. § 153-266.1 is also considered a public officer. However, a member of a County Planning Board under G. S. § 153-266.14 and G. S. § 153-9(40) or a City Planning Board *is not* considered a public officer.

19 January 1966
A. G. to W. Ward

Question: Can an assistant county tax supervisor accept an appointment to a city planning and zoning board without being in violation of Article XIV, Section 7 of the North Carolina Constitution?

Answer: No. This office has previously ruled that a member of a city planning board or commission is not a public officer, but that a member of a municipal zoning board of adjustment is a public officer. Therefore, if a person would perform the duties conferred upon a city zoning board, as well as those of a city planning commission, then he would be classed as a public officer. A county tax supervisor is considered a public officer and it appears that under the provisions of G. S. § 105-292 that an assistant tax supervisor would be considered a public officer since, under this section, the board of county commissioners can delegate to him the duties of real property appraisal, listing and appraisal of business property or such other duties as the board may deem advisable.

ELECTIONS

Voting for Group Candidates in County and Municipal Primary

24 January 1966
A. G. to Alex K. Brock

Question: In counties where it is applicable would the anti-single-shot law, G. S. § 163-175 [(6)], apply to the election of district court judges and members of the General Assembly?

Answer: No. G. S. § 163-175[(6))] does not apply to the primary nomination of district court judges and members of the General Assembly because they are State rather than county and municipal officers.

MUNICIPALITIES

Condemnation

11 January 1966
A. G. to Emmett C. Willis

Question: Can a city lawfully condemn land owned by a member of the City Council in order to acquire a desirable site for city usage?

Answer: It is our opinion that a municipality may legally condemn land owned by a member of the City Council. The condemnation action should not be compromised but the award of damages should be determined by final judgment in the condemnation action.

Public Utilities

2 December 1965
A.G. to Robert L. Warren

Question: Can a municipality operate a public bus transportation system and finance the purchase of the busses from nontax revenue?

Answer: Yes. A municipality has the authority to appropriate money for

all lawful purposes (G.S. § 160-200 (3)) and can acquire, establish and operate certain facilities enumerated in G.S. § 160-282. G.S. § 160-2(6) implies that a municipality may own, operate and sell public utilities. Although there is no specific statutory authority pertaining to bus transportation systems *per se* in the General Statutes, we are of the opinion that a municipality may own and operate a public bus transportation system. We do not believe that a municipality could use public funds for the benefit of private companies operating such a transportation system. We believe that a city may use nontax revenue to purchase busses as long as the funds are on hand and available and it is not necessary for the city to enter into a contract which would pledge future receipts. See *Horton v Redevelopment Commission,* 226 N. C. 306, where Justice Higgins, in the concurring opinion, wrote: "The pledge is for payment out of future receipts and not from presently available funds. Art. VII, Section 6, of the State Constitution forbids the expenditure of tax funds for unnecessary purposes without voter approval. It likewise prevents a pledge of the city's faith and credit to be fulfilled by future receipts regardless of the source."

Although the Court might not consider the operation of a public transportation system a necessary purpose, it would consider it a public purpose. We find no direct authority for a municipality to contract and to receive a federal grant for such a purpose. However, it is our opinion that such direct authority is not necessary and may be implied from the authority in G. S. § 160-200(3), which permits a city to purchase, conduct, own, lease and acquire public utilities. It should also be noted that G.S. § 160-2(4) authorizes a municipality to make such contracts, purchases and hold such personal property as may be necessary to the exercising of its powers.

13 January 1966
A. G. to Robert L. Warren

Question: If a city can lease busses to a private company to be operated within the city limits, [the city having contributed one-third and the Federal government two-thirds towards the purchase price of the busses] can this lease be for a nominal consideration such as one dollar or must the consideration more nearly reflect the value of the use of such busses?

Answer: We find no authority upon which to base our answer to this question. However, it would seem that the lease should make provisions for such consideration as would be equal to the depreciation of the vehicles in order that replacements may be made without additional cost to the municipality. Otherwise, it would appear that a lease for a nominal consideration would be almost the same as a donation to the private corporation which is prohibited by law. □

Sewer Systems

20 December 1965
A.G. to David E. Reid, Jr.

Question: Can a city compel an individual to 1) install water and sewer pipes which conform to the city's building code and 2) to connect with and use the city's water and sewer system?

Answer: G.S. § 160-240 provides that: "The governing body may require all owners of improved property which may be located upon or near any line of such system of sewerage to connect with such sewerage all water closets, bathtubs, lavatories, sinks, or drains upon their respective properties or premises, so that their contents may be made to empty into such sewer, and fix charges for such connections."

Therefore, a city could compel an individual to install *sewer* pipes conforming with its building code and to connect with and use the city's sewer system. The statute is express and clear and would seem to be a valid exercise of the police power in the interest of public health. On the other hand, there does not appear to be any statutory authority to compel an individual to connect with and use a city's water system. Unless a city has a local enabling act it *could not* enforce compulsory use of a municipal *water* system.

Subdivision Ordinances

17 December 1965
A.G. to W. Osborne Lee, Jr.

Question: Would it be valid to amend a subdivision ordinance which requires the subdivider or owner of a subdivision to install curb and gutter improvements on the streets within the subdivision at no cost to the city, to permit the subdivider or the owner of the subdivision to seek relief from the curb and gutter requirements by application to the Planning Board, with relief granted upon the approval of the City Council?

Answer: We find no statutory authority which would permit the adoption of the proposed amendment. Neither the Ordinance nor the proposed amendment sets forth any standards which would justify a variance from the curb and gutter requirement in the low income areas. It would appear that before the proposed amendment could be adopted, it should contain sufficient standards and criteria upon which the Planning Board and City Council could act in reaching a determination as to whether a variance should be granted, so as to avoid discriminatory treatment of different owners. □

The Training School

(Continued from page 30)

to speak, and his eventual and most satisfactory adjustment will have to be accomplished on a local level, probably his own home town.

So the training school is not an end in itself. There is no guarantee on the effectiveness of the school program. The community cannot expect the school to take a child with whom it has failed in almost every respect, and return him completely well of all his emotional disturbances and family troubles. The treatment process must continue. The training school programs have changed from purely custody and control to one of care and treatment. Most children remain at the training school the usual or normal period of time, and most of them make a reasonably good adjustment to the school. Almost all of them leave the school with a sincere intention to get along. The year or so a child may be in the institution passes very quickly. All the available time will be

Court Prosecutor

(Continued from page 18)

prescribed by the legislature for districts where it is estimated that the caseload will require them. For districts activated in December, 1966, the 12th (Cumberland and Hoke counties), the 16th (Scotland and Robeson), and the 25th (Burke, Caldwell and Catawba counties) are allowed a full-time assistant prosecutor. Full-time assistants for the districts to be activated in 1968 and 1970 will be prescribed by the 1967 legislature. If the caseload of a district is such that the prosecutor (and his full-time assistants, if any) need assistance to keep the dockets reasonably current, or if a full-time assistant becomes disabled, or if the prosecution of criminal cases in a specific location within a district would be better served, the prosecutor, with the approval of the Administrative Officer of the Courts, may appoint a part-time assistant, to be compensated at $35 per day for each day in court. All assistants are appointed by the prosecutor, to serve at his pleasure.

A prosecutor may be suspended or removed from office, and reinstated, for the same causes and under the same procedures as are applicable to a district court judge. These include the prefering of sworn written charges, a due process hearing before a superior court judge, and the right of appeal to the Supreme Court.

A vacancy in the office of prosecutor is filled, for the unexpired term, in the same manner as the original appointment. If a prosecutor in a district which has no full-time assistant prosecutor becomes for any reason unable to perform his duties, the senior regular resident superior court judge for that district may appoint an acting prosecutor to serve during the period of disability. An acting prosecutor has the same power and authority as the regular prosecutor. He is entitled to $45 per diem for each day in which he acts as prosecutor.

Criminal Jurisdiction of District Court

Exclusive jurisdiction over misdemeanors is given to the district court, subject to minor exceptions primarily to permit the superior court solicitor to pursue to a conclusion all criminal matters which originate by means of felony indictments. This will be a change in about three-fourths of the counties, where, under G.S. 7-64, the superior court and the local city or county court now exercise concurrent jurisdiction over misdemeanors. This may bring a welcome relief to some superior court solicitors, but it will not of course remove the solicitor from the trial of misdemeanors entirely, since many misdemeanors (drunk driving, for example) for one reason or another will continue to be appealed to the Superior Court for trial *de novo*. It may bring swifter justice, however, to some defendants who choose not to appeal, since the district court will certainly be in session much more frequently in most counties than the superior court now sits in criminal sessions.

Working Conditions

The prosecutor looks to the State for his compensation, to the senior regular resident superior court judge for his appointment and reappointment, and to the chief district judge for his schedule of sessions of criminal court. To the county he must look for his office space, if any, since the Act specifically provides that counties shall use a portion of the costs of court (the *facilities* fee) for providing, among other court-related facilities, ". . . adequate space and furniture for . . . prosecutors . . ." While in most counties an office for the part-time recorder's court solicitor may not have been provided, it will be in the best interest of the counties affected to make provision for space for the prosecutor as soon as possible since he will be a full-time official whose value to the county will suffer if he has no place other than the courtroom in which to work. (In some counties, a *city* may provide a courtroom, and in such case, it should provide space for the prosecutor also.) As for secretarial assistance, this is apparently an *operating* expense, chargeable under the Constitution to the State, and the implementing legislation makes no provision for secretarial assistance for prosecutors. In this respect the prosecutor is no worse off than judges or solicitors.

Most district court districts include more than one county, and in these districts the prosecutor must be prepared to travel, especially if his is a "one prosecutor" district. In most districts this will be no problem, but in a few, such as the first and the 30th, each embracing seven counties, the distances involved give rise to serious disadvantages. It may be that in these districts the caseload will call for one prosecutor, but the rime and distance factors will call for two, or ar least for a part-time assistant. Problems of this nature musr be resolved by the Administrative Officer of the Courts, who, under the Act, is responsible for making recommendations concerning the number of prosecutors required in each district for the efficient administration of justice. □

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needed to bring about changes in his home, to make arrangements for another form of placement if his home is ruled out, and to prepare the child and his parents emotionally and intellectually for the future plans and necessary adjustment to them.

The Public

A training school is no stronger in the community and in the state than the public thinks it is. The support necessary for a good treatment program depends on an informed public willing to accept the program and responsibility for it. Considerable money is required to properly care for a student in a training school and, as long as such schools are operated on public funds, the public has a right to know what is going on in them. It should have some conception of the aims and objectives of the training school and must be aware of the problems that are encountered in treating, training and maintaining custody of students committed to its care.

In too many instances the community regards the training school with apathy, suspicion, or distrust. This unfortunate and unnecessary situation is mostly the result of ignorance on the part of the community about the theory and practice of correctional reeducation. This lack of support is due in large measure, to the non-existent or unproductive public relations programs of the training schools.

The establishment and maintenance of good public relations between the training school and the community is more than a mere luxury; it is a necessity. A well informed community will not only aid and assist in the development of resources and programs but will protect the training school and take up for its programs. □

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